

FINAL
RESPONSIVENESS SUMMARY

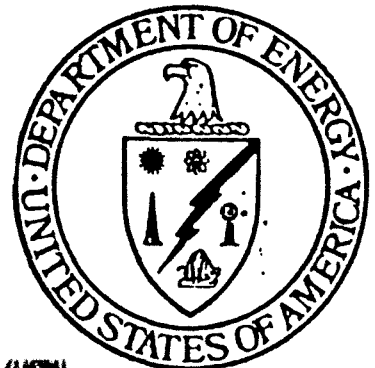
FOR

ROCKY FLATS
FEDERAL FACILITY AGREEMENT AND CONSENT ORDER

JANUARY 1991



ADMIN RECORD



By [Signature]

Date 2/20/91

A-SW-000232

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ROCKY FLATS ENVIRONMENTAL MONITORING COUNCIL
FIRST POLICY REPORT, FEBRUARY 1990

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1.0 BACKGROUND AND INTRODUCTION

The State of Colorado, the U.S. Department of Energy (DOE), and the U.S. Environmental Protection Agency (EPA) (the Parties) concluded the Federal Facility Agreement and Consent Order to establish a framework for cleaning up the Rocky Flats Nuclear Weapons Plant. This "interagency agreement" (IAG) coordinates the working relationship among the Parties in their cleanup and oversight efforts at the plant. In the agreement, the major environmental laws under which the cleanup will take place, the Resource Conservation and Recovery Act (RCRA), the Colorado Hazardous Waste Act (CHWA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), better known as Superfund, are integrated.

The Parties asked the public to comment on the agreement during a 60-day public comment period which began December 22, 1989 and ended February 21, 1990. The public was notified of the opportunity to comment through display advertisements printed in major Denver area newspapers. The press was briefed on the document during a news conference, and three news releases were published during the public comment period to seek active community involvement.

To provide the public with information on the agreement, EPA produced and distributed an informational bulletin describing the document. EPA also developed a question and answer sheet addressing commonly-asked questions about the agreement. In addition, the State developed a "Citizen's Guide to the IAG," which was widely distributed. EPA distributed copies of the agreement to those who requested it. Over 200 copies of the agreement were sent to government agencies and interested citizens. On January 24, 1990, EPA, DOE, and the State hosted a workshop to provide information on the agreement and answer citizens' questions. The Parties also participated in the Rocky Flats Environmental Monitoring Council's January 29, 1990 meeting, which addressed how the public could provide input to the agreement.

Both oral and written public comment was received. Oral public comment was received at a public meeting February 13, 1990. The public was reminded about the public meeting in a mailing sent to EPA's mailing list of over 800 persons. A transcript of this meeting has been placed in the Rocky Flats information centers and sent to those who requested it. Written public comments were submitted to EPA's Rocky Flats Team Leader for cleanup activities.

The purpose of this document is to respond to the public comments received. Following the close of the public comment period, EPA compiled the responses, reviewed them, and

produced draft responses. These draft responses were then discussed among the three Parties. Final responses were developed in consultation with the State of Colorado and DOE.

Changes made to the IAG must be acceptable to the State, DOE, and EPA, and must take into consideration, to the extent possible, comments made by the public during the comment period. The final agreement is scheduled to be available at the same time this Responsiveness Summary is released. A copy of this Responsiveness Summary will be distributed to citizens, upon request.

The Responsiveness Summary contains all of the public's written and oral comments as well as the Parties' responses to each comment. It also contains additional information, including a categorization and tabulation of comments and a comment analysis. Section 2.0 of the document establishes comment categories, tabulates the number of comments received in each category, and references the specific comments pertaining to each category. Section 2.0 also summarizes and analyzes major issues addressed by the commentors. Section 3.0 is a list of names, addresses, and phone numbers of the groups and individuals that provided comments. Section 4.0 includes the written comments received and the Parties' responses. Section 5.0 contains the oral comments and responses. Section 6.0 is a list of corrections and changes that were made to the IAG as a result of the public comments and as a result of corrections and additions noted by the Parties.

The written comments and responses are presented in the following order: Rocky Flats Cleanup Commission (RFCC), Rocky Flats Environmental Monitoring Council (RFEMC), environmental/citizen organizations, municipalities, Jefferson County Planning Commission, League of Women Voters, and individual citizens. The oral comments contain several clarifying comments made by the Parties during the meeting. Many responses to comments throughout the Responsiveness Summary refer to responses made to earlier, similar comments. These comments have been cross-referenced for the reader. The majority of the oral comments were also submitted in writing. Where comments are similar or the same, reference to the original response is indicated. Where oral and written comments are the same, they have been counted twice for the purposes of categorization.

2.0 COMMENT SUMMARY

The Parties would like to express their appreciation to the public for their dedicated and successful input on the IAG. The majority of the comments were specifically focused and pertinent to the IAG and were presented in a professional and intelligent manner. The public, as individuals and representatives of organizations and municipal governments, should take pride in the level of commitment evident in their efforts.

The Parties have agreed to respond to the majority of the comments by initiating significant changes to the agreement, as a result of the comments received from the community. A summary of the major changes to the IAG, as a result of the comments, and as a result of corrections and additions noted by the Parties, is given at the end of this document in Section 6.0.

The Parties thank the public for the attention given to this important cleanup effort at Rocky Flats. This exercise has shown that effective public input can be achieved for important Rocky Flats environmental and public health issues. With this activity, the Parties intend to begin improved response to public concerns and development of further community involvement.

2.1 COMMENT CATEGORIES AND TABULATION

The Parties divided the written and oral comments received from the public into 24 categories. The categories were developed based on the issues that the community, through their comments, identified as the major areas of concern. The comments were categorized based upon the main issue(s) contained within the comment. The categories, and a tabulation of the comments received in each category, are included in Table 1. Several comments have been counted twice as they pertain to more than one category. Comments that are repeated by the same commentor verbally and in writing are counted twice. A breakdown showing which comments pertain specifically to each category is included as Table 2.

2.2 COMMENT ANALYSIS

Five of the 24 categories noted above contain the majority of public comments received by the IAG Parties:

- 1) Community Involvement (81 comments)
- 2) Off-site Assessments (29 comments)
- 3) Funding Issues (22 comments)
- 4) Contaminant Emissions and Migrations Resulting from Construction (16 comments)
- 5) Conflict Resolution (9 comments)

**TABLE 1
COMMENT TABULATION**

| <u>Category</u> | <u>Number of Comments Received</u> |
|---------------------------------------------------------------------|-------------------------------------------|
| Community Involvement | 81 |
| Off-site Assessments | 29 |
| Funding Issues | 22 |
| Contaminant Emissions and Migrations Resulting from Construction | 16 |
| Conflict Resolution | 9 |
| Final Determinations | 8 |
| Schedules | 8 |
| 881 Hillside Site Issues | 7 |
| Comments Supporting the IAG | 7 |
| Standley Lake Interceptor Trench | 6 |
| Liability and Accountability | 5 |
| Compliance with Other Laws | 5 |
| Concerns with the Site | 5 |
| Miscellaneous Issues | 5 |
| Standards | 4 |
| Sovereign Immunity | 4 |
| RCRA/CERCLA Integration | 4 |
| Stipulated Penalties | 4 |
| Force Majeure | 4 |
| Synergy Issues | 3 |
| Loopholes | 3 |
| Quality Control | 3 |
| Health and Safety | 2 |
| Environmental Impact Statement | 2 |

TABLE 2
CATEGORY BREAKDOWN

| <u>Category</u> | <u>Comments Pertaining to Category</u> |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community Involvement | 4, 11, 12, 20, 21, 23, 24, 25, 26, 27, 35, 36, 40, 41, 42, 43, 46, 48, 57, 62, 72, 73, 74, 75, 76, 88, 89, 90, 91, 92, 109, 110, 111, 112, 113, 128, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 145, 146, 147, 150, 153, 157, 173, 179, 182, 184, 185, 186, 190, 191, 192, 195, 196, 197, 198, 199, 200, 206, 208, 209, 211, 218, 224, 225, 227, 235, 236, 237, 238 |
| Off-site Assessments | 12, 29, 34, 45, 49, 50, 51, 52, 53, 54, 55, 58, 59, 61, 63, 65, 68, 69, 70, 71, 77, 78, 79, 104, 115, 142, 171, 192, 229 |
| Funding Issues | 1, 2, 3, 5, 6, 37, 39, 66, 94, 108, 117, 125, 148, 154, 155, 156, 158, 183, 186, 209, 226, 234 |
| Contaminant Emissions and Migrations Resulting from Construction | 33, 107, 118, 119, 121, 123, 127, 134, 136, 149, 175, 188, 192, 201, 203, 213 |
| Conflict Resolution | 7, 8, 38, 114, 143, 153, 180, 185, 228 |
| Final Determinations | 16, 28, 31, 105, 144, 176, 189, 231 |
| Schedules | 47, 56, 152, 166, 167, 172, 214, 223 |
| 881 Hillside Site Issues | 22, 44, 67, 116, 207, 221, 222 |
| Comments Supporting the IAG | 159, 160, 161, 162, 168, 219, 230 |
| Standley Lake Interceptor Trench | 60, 126, 169, 170, 204, 216 |
| Liability and Accountability | 10, 64, 102, 163, 220 |
| Compliance with Other Laws | 32, 80, 81, 97, 98 |
| Concerns with the Site | 129, 165, 194, 215, 218 |

TABLE 2 (cont.)
CATEGORY BREAKDOWN

| <u>Category</u> | <u>Comments Pertaining to Category</u> |
|--------------------------------|----------------------------------------|
| Miscellaneous Issues | 151, 164, 178, 181, 187 |
| Standards | 17, 96, 101, 202 |
| Sovereign Immunity | 83, 103, 106, 232 |
| RCRA/CERCLA Integration | 30, 82, 99, 100 |
| Stipulated Penalties | 84, 85, 86, 87 |
| Force Majeure | 9, 93, 122, 212 |
| Synergy Issues | 18, 120, 210 |
| Loopholes | 95, 174, 193 |
| Quality Control | 13, 124, 177 |
| Health and Safety | 14, 15 |
| Environmental Impact Statement | 19, 205 |

These five areas appear to be of the greatest concern to the community. The remaining 19 categories contain a total of 89 comments. The Parties' responses to the comments in all 24 of the categories address the commentors' concerns, provide background information, and discuss the Parties' concerns and thoughts regarding the comment. The responses were developed by the State, DOE, and EPA.

Each IAG comment category contains a variety of types of comments. For example, the community involvement category includes comments about the Rocky Flats community relations plan, citizen review of primary IAG documents, independent audits, local government involvement, information repositories, technical jargon, and public involvement in monitoring and investigations.

The major concern throughout comments in the community involvement category is that the community be kept informed regarding activities at the site and that the public be permitted to review all relevant site documents.

The off-site assessment category contains comments that, though lower in number than community involvement comments, express a public urgency about IAG off-site assessments at Rocky Flats. These comments include issues such as expediting the assessments, permanent remediation, liability, and effects upon drinking water.

Although comments regarding the IAG off-site assessments were lower in number than community involvement issues, off-site assessments appear to be of great concern to the community. As a whole, the public requested that the off-site assessments be addressed more aggressively and that they be considered a top priority due to the proximity of the off-site areas to the general public.

For the most part, funding comments revolved around public concern that EPA and the State receive adequate funding to oversee the IAG schedules and review the investigative and cleanup activities at the site. Comments in this category also expressed the community's concern about the possible shortage of funds to public groups (for example, the Technical Assistance Grant (TAG) group) and municipalities for constant oversight of IAG work plans, reports, and site activities. Concern was also voiced about whether DOE's funding would be adequate for long-term compliance with the IAG, and whether compliance would be enforced if funding is not adequate.

Within the funding issues category, the public expressed the most concern about funding for public review of the IAG documents and activities. However, the community also expressed

great concern about EPA and State funding and the agencies' abilities to provide adequate resources to meet the schedules outlined in the IAG.

The next category to receive numerous comments was the contaminant emissions and migration resulting from construction category. These comments include concerns about placement of air monitors at the site, migration of contaminants during remediation, resuspension, and containment.

In the contaminant emissions and migration resulting from construction activities category, the commentors consistently expressed concern about emissions from both cleanup and regular work activities at the site. The commentors requested that this issue be addressed and that little to no emissions and migrations occur at any time.

The last of the five main categories contains comments on conflict resolution. Concerns in this category include suggestions that alternative IAG dispute resolution processes (such as mediators or an arbitration board) be considered. Eight of the nine comments in this category request public involvement in the IAG dispute resolution process. Commentors recommended two methods of including the public in the IAG dispute resolution process: (1) the Parties notify the public of disputes and request comments and suggestions for resolution of the conflict and (2) the Parties include a public representative on the IAG dispute resolution committees.

The remaining IAG comment categories contain comments that review specific issues such as strengthening the IAG's force majeure statement, determining final waste disposal sites, performing further studies of the synergistic effects of contaminants from the site, concerns regarding the 881 Hillside site and its Responsiveness Summary, the proposed Standley Lake interceptor trench, RCRA/CERCLA integration, quality control, and scheduling.

This comment analysis provides a brief overview of the major issues brought up by the community during the IAG's public comment period. The reader should review responses to specific written and oral comments (Sections 4.0 and 5.0) to obtain more detailed information regarding community concerns surrounding the Rocky Flats IAG. Table 2, above, outlines which comments address specific categories of interest.

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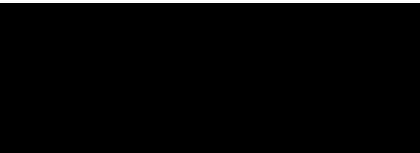
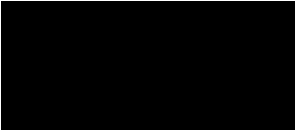
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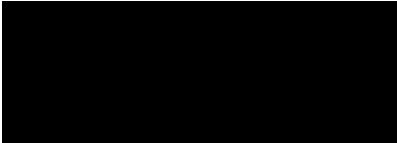
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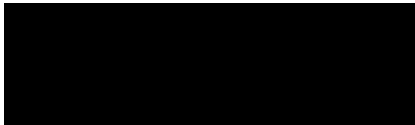
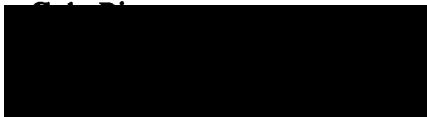
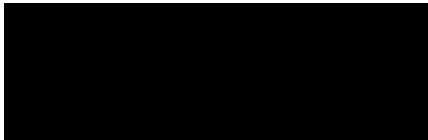
LIST OF COMMENTORS (cont.)

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4.0 RESPONSES TO WRITTEN COMMENTS

COMMENTOR: Joe Tempel, RFCC

It is clear that a great deal of money will be required to clean up Rocky Flats. What is not clear is whether or not funding will be made available in a timely manner. We recognize that DOE budgets are subject to Congressional action but we recommend that the following actions be taken to ensure that the schedules are met and cleanup done in a quality manner:

Comment 1

With the money allocated to DOE, cleanup should be given a higher priority over production. Cleanup schedules should not be compromised. In light of the end of the Cold War, national security will not be jeopardized by building fewer nuclear triggers at Rocky Flats.

Response to Comment 1

While this is a timely observation, the IAG is not a mechanism which can guarantee that the national budget will be developed and specifically designed to prioritize cleanup at Rocky Flats above all other concerns of the nation which also need adequate funding. However, DOE has committed to sincere efforts in obtaining adequate funding to meet the requirements of the IAG. The State and EPA have reserved their rights to pursue other mechanisms should DOE not be able to obtain funding and achieve the goals of the IAG. These include bringing enforcement actions seeking DOE compliance with the IAG and enforcement actions against other potentially responsible parties.

The budget allocation process is complex, and the United States Congress is aware of the funding language in the IAG and is discussing the matter in several committees. This is a national concern and can be resolved at this time only through the type of language contained in the IAG at paragraphs 250-255, pages 94-97.

Comment 2

Adequate funding for personnel should be provided to the Department scientists and managers to adequately review and manage the cleanup program.

Response to Comment 2

This is an important aspect for achieving cleanup at Rocky Flats. The Colorado Department of Health (CDH) presently receives funding from DOE under the July 1989 Agreement in Principle to conduct oversight at Rocky Flats in several areas of environmental concern. This includes some IAG support needs. EPA is not currently receiving oversight funding from DOE but has agreed to refocus its priorities for 1 year, beginning on the effective date of the IAG, to address oversight of the IAG. If, at the conclusion of 1 year, EPA has not obtained oversight funding from DOE or other sources, EPA may terminate the IAG in accordance with paragraph 182 of the draft IAG. Part 31, paragraphs 189 and 190 of the draft IAG address recovery of the State's costs. In order to assure commentors that oversight efforts aimed at review and management of the cleanup program are adequate, EPA and the CDH will meet with groups that express an interest to define the resources allocated to personnel and oversight needs. No specific change in the IAG will be made unless the EPA oversight funding issue changes and requires a modification.

Comment 3

Adequate funding should be provided to the Rocky Flats Cleanup Commission to hire technical consultants to help us review the numerous documents pertaining to cleanup. Just in 1990 alone 28 documents are scheduled for completion. The \$50,000 technical assistance grant we received will not be sufficient because we anticipate spending this money in 1990. The schedules in the IAG extend at least through 1996. We recognize that the SARA amendments limit the grant to \$50,000 but we feel an exception should be made for Rocky Flats. It is a complex site with 10 Operable Units, each one of which requires \$50,000 to do an adequate review.

Response to Comment 3

EPA Region VIII recognizes the resource intensity for maintaining a review and comment pace that will be adequate with regard to the IAG schedules. There are procedures, which have been recently revised that may make it easier for TAG organizations to obtain additional funding. EPA intends to work with the Rocky Flats TAG organization to initiate efforts for further TAG funding. The proposed IAG is not the appropriate mechanism for addressing this matter and will not be amended. Specifically, the TAG program has been amended to provide for additional funding by Grant renewals. A maximum of two requests per National Priority List (NPL) site can be awarded, totaling an additional \$50,000. Thus, a group can receive total technical assistance of \$100,000.

Comment 4

Adequate funding should be provided for the hardware, software, and storage space required to manage the information generated at the Plant. While space is being made available at the Front Range Community College for a public repository, space is woefully absent at EPA and the Department of Health. A major investment will be required to develop an information management system to link data systems at EPA, DOE, and the Department of Health and make it available to the program managers and the general public.

Response to Comment 4

Through mechanisms provided to the State by the July 1989 Agreement in Principle between the State and DOE, and funding that the State receives from EPA, development of a comprehensive data/information system regarding Rocky Flats is being considered. If commentors have further concerns on the matter, they may contact Marcie Osterholt of EPA at (303) 293-1505 or Joe Palomba of the Colorado Rocky Flats Program Unit at (303) 355-6437. The IAG will not be modified to address this comment.

Comment 5

Funding should be committed to the retraining of the existing workers at Rocky Flats in cleanup. The goal should be that no worker will lose his/her job when production is phased out and cleanup is phased in. The policy should be that the present workers should be given first option to move from a production job to a cleanup job (with adequate training) before new people are hired at Rocky Flats.

Response to Comment 5

The Parties appreciate this comment as it is recognized as having merit toward support of cleanup efforts at Rocky Flats. However, this suggestion is a DOE and DOE contractor policy concern which is beyond the scope of the IAG. The proposed IAG will not be modified to incorporate this comment.

Comment 6

In order for the general public to accurately chart the progress of the cleanup, cost estimates should be assigned to the tasks identified in the IAG. This information should be accumulated on a yearly basis and compared to the money actually budgeted for cleanup. We recognize these costs are only preliminary until the additional studies are completed but an effort should be made to estimate the total magnitude of the cleanup costs for budgeting purposes.

Response to Comment 6

Details of DOE's budgetary process will be provided annually to the public through the published DOE Environmental Restoration and Waste Management 5 Year Plan, as well as the annual budget appropriated by Congress. In addition, the progress of cleanup activities at the plant may be tracked by the public through monthly progress reports. All of this information will be available in the public reading room. Briefings on the budgetary documents will be provided for the RFCC, the Governor's Environmental Monitoring Council (GEMC), and Municipalities Group upon request. Please refer to Response to Comment 1.

A major portion of the IAG outlines a process to resolve conflicts which might arise amongst the signators to the agreement. The intent of this process is to solve the conflicts at the lowest management level and avoid time consuming lawsuits. While the RFCC generally concurs with this concept, we have the following recommendations to improve it:

Comment 7

Lawsuits should be further avoided by the agencies agreeing to a dispute resolution process which subjects any unresolved conflicts to a higher authority. This might include an arbitrator or an arbitration board, a mediator, a special master, or any other legal remedy to avoid a lengthy trial. Cleanup at Rocky Flats cannot be delayed by lawsuits and a better system should be developed to avoid them.

Response to Comment 7

The Parties appreciate this comment as a positive input to the cleanup process. However, the Parties specifically designed the present dispute resolution process in the IAG to minimize the possibility of litigation by requiring that disputed issues be repeatedly addressed by progressively higher levels of management. While the use of an alternative dispute resolution process may also prevent litigation, it may also extend dispute resolution in a process which is currently designed to give final decision authority to either EPA or the State in order to settle a dispute in a timely manner.

Comment 8

While provisions are established to keep the agencies out of costly and time consuming lawsuits, similar provisions should be afforded the general public. The public should be integrated into this conflict resolution process because we cannot afford to bring suit against the agencies and we do not want to delay cleanup of the Plant.

Response to Comment 8

The IAG and the environmental statutes and regulations governing the Rocky Flats cleanup do not accommodate such a level of public involvement. However, the Parties agree this is a major matter of concern to commentators and will include provisions in the Community Relations Plan (CRP) for informing the TAG organization (RFCC), the RFEMC, and the Municipalities Group of disputes taken to the Senior Executive Committee (SEC) level of the dispute resolution process in the IAG, and will notify these organizations of resolutions of such disputes.

It is the responsibility of the government agencies to make final decisions regarding cleanup activities at Rocky Flats. There may be times that the Parties decide on a course of action which is not popular. However, the Parties agree to take steps to be open, informative, and able to meet with those who disagree. The present dispute resolution process allows the Parties to carry out this mandated responsibility as efficiently as possible. With the proposed changes to the CRP, the public's involvement in dispute resolution will be enhanced.

Comment 9

The discussion of "force majeure" should be strengthened (see page 91) because this exemption should be limited to major events outside the control of the agencies which would delay cleanup. The present text implies that if a minor break occurs in the plumbing or a minor piece of equipment breaks down, this would be sufficient reason to hold the agency harmless from meeting the schedules in the IAG. This should be clarified so that only catastrophic events are included in this discussion.

Response to Comment 9

In order to obtain an extension of a deadline or a timetable required by the IAG, a party must show that a "good cause" exists for the extension. Good cause is defined, inter alia, as an event of Force Majeure. This is the only place in the IAG that a Force Majeure event may affect the obligations and responsibilities of the Parties. In essence, the Parties stipulate, through the Force Majeure clause, what constitutes good cause for an extension of a deadline or timetable. A Force Majeure event does not relieve any party of its ultimate obligation to perform a specific task. The party must complete the task when the extension is over.

As pointed out by the commentators, the definition of Force Majeure may cover a wide range of activities. However, the events objected to by the commentators is governed by a "reasonably diligent maintenance" standard. This places a significant burden on the party seeking the extension to show that the breakage or accident occurred despite their reasonably diligent maintenance, i.e., the maintenance must be more than routine, it must be diligent. If in seeking an extension a party claims a Force Majeure event, the other Parties may dispute such claim, and the reasonably diligent maintenance standard would be applied.

Breakage of machinery or equipment may make it impossible for a party to maintain a schedule or meet a deadline. If that machinery or equipment had been diligently maintained then the breakage is unforeseen and unpredictable. The Parties believe that such an event may, depending on the circumstances, constitute good cause to extend a schedule or deadline.

Force Majeure clauses are traditionally used in construction-related contracts and the specific clause used in this IAG is identical to Force Majeure clauses used in other IAGs and EPA's national model IAG. It is EPA's experience that Force Majeure clauses are rarely used. The language in the IAG will not be modified to address this comment.

Comment 10

If E.G. and G. is to be held liable for meeting these schedules, they should be a signature to the agreement.

Response to Comment 10

As described in Part 2 of the IAG (Parties and Role of DOE Contractors), DOE, as a Party, is ultimately liable for meeting IAG schedules. EG&G is DOE's primary contractor which will be performing work for DOE to assist DOE in meeting its IAG obligations. EG&G is liable to DOE for missed obligations and DOE is liable to EPA and the State for missed IAG commitments. In paragraph 240 of the IAG, EPA and the State reserve their rights to bring enforcement actions against other potentially liable parties including contractors, subcontractors, and/or operators, if DOE fails to comply with the IAG.

The RFCC recommends that the following measures be taken to ensure that data collected is of the highest quality and quality workmanship is maintained throughout the cleanup process:

Comment 11

An internal and external audit system should be established to ensure not only the program managers but also the public that the contractors are performing the work for which they are paid. A computerized logging system should be developed for the contractors to enter all test data for soil, water, and air samples taken during cleanup, dust control measures, and all cleanup activities they perform on a daily basis. The public and the program managers need to be assured that the cleanup is being conducted according to the procedures identified in the Health and Safety Plans. If an "independent" audit is conducted and reports issued to the public, these assurances can be verified.

Response to Comment 11

The Parties understand commentors' concerns regarding accountability and verification of work being performed through cleanup efforts. DOE and its contractors do have mechanisms in place for overseeing contractor and subcontractor performance. EPA and the Department of Health will be conducting oversight activities and developing periodic reports addressing oversight activities. These reports will be presented to TAG and RFEMC on a regular basis and to other groups or organizations that may request them. Many of the reports which are required by the IAG will contain the information suggested by the comment.

Comment 12

Split samples should be taken on a regular basis by the agencies to verify the adequacy of the testing program. Well judged decisions can only be made on reliable data. The RFCC is trying to sort out fact from fiction at the Plant so we can focus our efforts on the greatest problems at the Plant first. Because of the public's fear of off-site pollution, this testing should be completed as rapidly as possible to confirm or disconfirm their fears. The schedule for OU10 should be accelerated.

Response to Comment 12

EPA and the CDH will be conducting periodic oversight which could include split sampling for future activities at Rocky Flats. These sampling events will coincide with important field work specified by work plans required by the IAG. Commentors will have access to this data to the extent allowable within enforcement sensitive information constraints. The oversight activities planned will address the concerns of this comment and IAG modification is not anticipated. However, the Parties acknowledge that many commentors have expressed concern that characterization of Operating Unit 10 (OU10) (the off-site areas) in an expedited manner is desired. The Parties wish to point out that the initial actions for OU10 include aggressive schedules (i.e., Table 6 of the draft IAG requires Historical Information and Preliminary Health Risk Assessment reports in October of 1990 and February of 1991). In addition, the State of Colorado is preparing to conduct further off-site soils, water, and air sampling to address the commentors and general public's concern through the State's Rocky Flats Program unit in accordance with the June 28, 1989 Agreement in Principle between the State and DOE. This data as it is gathered and evaluated will be added to the commentor's and public's knowledge to address this concern. The schedules in the IAG Statement of Work (SOW) shall include expedited work plan submittal and Remedial Investigations which may be found to be necessary after evaluation of the reports and data noted above.

Comment 13

While the RFCC requests that cleanup be accelerated, the quality of the work should not be compromised. If work is adequately scoped in the work plans and the appropriate information gathered, then the recycling of documents should be minimized. Economic incentives should be offered to the contractors to complete the cleanup in a shorter period of time if quality control is maintained. If quality control is not maintained, then fines should be assessed.

Response to Comment 13

The Parties appreciate this suggestion and intend to evaluate the schedules in the IAG to assure quality and timely cleanup. The Secretary of Energy has initiated steps to place increased emphasis on environmental incentives. The IAG is specifically focused upon cleanup activity and not DOE contracting policy. However, EPA and the CDH will conduct oversight and have reserved rights to take enforcement actions against DOE and/or its contractors for failure to take action required by EPA or the State pursuant to the IAG.

Comment 14

In the absence of quality data or a full characterization of the Operable Units for which Interim Remedial Actions are being prepared, the Health and Safety Plans should assume the worst site conditions and require the workers to dress accordingly (minimum C level).

Response to Comment 14

Specific health and safety plans for the site will be adopted from the general DOE and EPA Environmental Restoration Program. These health and safety plans will employ the general precept that unknown areas will be approached and characterized by the strictest applicable safety standards. The IAG requires that EPA and State guidance and applicable laws be utilized and followed to carry this out.

Comment 15

In order to determine whether or not the proper level of protection was provided to the workers, the health records of the workers and the dosage of pollutants to which they were exposed should be maintained for 35 years. This is common practice in the asbestos industry and should apply at Rocky Flats which contains a more harmful pollutant: plutonium. This information will be very important in setting new industry standards and conducting risk assessments.

Response to Comment 15

DOE's policy for maintaining individual worker radiation exposure records is stated in DOE Order 1324.2A dated, September 3, 1988. Under this policy, records of radiation exposure and exposure to hazardous concentrations of toxic chemicals are maintained for a period of 75 years. The IAG is not the appropriate vehicle to specify these requirements. However, the commentors and general public need assurance that cleanup activities are being conducted within the requirements of DOE, EPA, and State guidelines.

Oversight activities of EPA and the State shall emphasize health and safety procedure analysis. Health and safety is an integral and vital part of cleanup. Other groups interested in this aspect of the cleanup can express specific concerns to DOE, EPA, and/or the State to arrange reports and updates on health and safety plans and activities.

Comment 16

As part of the quality control program a plan needs to be developed for the disposal of the wastes generated during cleanup. Are facilities available to dispose of these wastes or will they have to be stored at Rocky Flats indefinitely?

Response to Comment 16

This is a difficult issue, and the concern is an important one. The IAG does not require that the final disposition of waste material be determined until the feasibility study/corrective measures study phase of the process. This process will eventually lead to a final Record of Decision/Corrective Action Decision (ROD/CAD). Until this stage is reached, there is much site characterization work to be completed. Also, it is the intent of the Parties to treat the wastes to the extent practicable, in order to allow return of materials (water, soils, etc.) to the environment. Based on presently available historical data, levels expected to be dealt with are low enough in radioactive concentration, not to be designated for high level disposal, or designated as Transuranic (TRU) waste. However, DOE is confident, if TRU waste is discovered, the concern can be addressed. The commentor is correct in pointing out that much of these materials may be immobilized or treated prior to movement on- or off-site. DOE is pursuing plans and permits for disposal at other sites in the nation. While the Rocky Flats IAG may not be able to resolve this problem nationally, the activities required by the agreement may serve as incentive to expedite resolution of the disposal capacity problem. All of the decision documents that address this issue will be available for public review and comment. The IAG will not be modified to designate final disposition of wastes because it cannot predetermine the ultimate remedy. The IAG process will force exploration of options to resolve these matters if waste turns out to be hazardous or radioactive.

Comment 17

In the first section of the IAG (paragraph 20 on page 12) it is not clear what happens if standards are not met during cleanup. It implies that any action completed under this agreement is final. It should be clarified that "completed" assumes standards are met and maintained during an appropriate monitoring period.

Response to Comment 17

It is the intent of the Parties to meet or exceed the cleanup standards required under the IAG. Further clarification of the definition of "completed" is provided in Part 45 of the draft IAG, Duration/Termination. Also, Response to Comment 105 further addresses this concern.

Comment 18

A study of the synergistic effects should be made to determine what standards are appropriate for cleanup when more than one pollutant is present. An additive or multiplier factor should be incorporated into the final standards depending upon the number of pollutants present.

Response to Comment 18

The Parties agree that further work is needed with regard to developing scientific approaches to analyze synergistic effects due to exposure to, or presence of, multiple contaminants. The additive effect of exposure to several wastes/constituents may be addressed by setting more stringent standards at exposure points where various contaminants may converge and in other areas where multiple contaminants are present. By monitoring at these exposure points or common confluences and setting adequate standards, additive effects can be minimized. As further scientific information is made available, the Parties agree to evaluate the information and apply any new research or scientific methodology that specifically addresses this concern. Such evaluations will be considered in investigations, studies, and decisions required under the IAG. The Statement of Work (SOW) of the IAG provides for this in paragraph VII.D.1.a.

Comment 19

While an Environmental Impact Statement (EIS) is appropriate before production resumes, it is not necessary to process environmental assessments or EISs for cleanup activities. If the documents outlined in the IAG are adequately prepared, EISs or EAs would be redundant and would only serve to slow up the cleanup process.

Response to Comment 19

DOE intends to prepare National Environmental Policy Act (NEPA) documentation for Environmental Restoration activities. EPA and the State have not required these steps under the IAG. DOE will prepare NEPA documentation in parallel with efforts required by the study and interim measure/interim remedial action (IM/IRA) provisions of the IAG.

Comment 20

An "Interim" CRP should be developed immediately and consist of but not be limited to the following elements:

The RFCC should receive a minimum of seven copies of any document pertaining to cleanup. Our Board of Directors consists of fifteen people and this is the minimum number of copies required to complete an expeditious review.

Response to Comment 20

An Interim Community Relations Plan (ICRP) shall be developed and implemented until such time as the CRP, as required by the IAG, is finalized. Reasonable efforts shall be made to provide interested citizens with copies of documents related to cleanup. The number of these documents made available depends on the size of the document, its relative significance to the cleanup effort, and whether it is a preliminary or draft document. Requests for documents must be handled on a case-by-case basis. The intent is to provide the public with as much information as it truly wants and needs to be effective in evaluating the cleanup actions. The Parties agree to work with the RFCC to provide it with its information requests on a case-by-case basis.

Comment 21

The RFCC requests that we have an opportunity to concurrently review the work plans that are developed. It is especially critical for us to be involved in developing the scopes of work so that we are satisfied with the testing programs proposed and cleanup technologies being assessed.

Response to Comment 21

The Parties agree to provide joint briefings on work plans to the RFCC, the RFEMC, and the Municipalities Group, upon request, to allow for community input. This mechanism shall be established under the CRP to allow periodic discussion of work plan development prior to finalization.

Comment 22

The RFCC requests the opportunity to review the Responsiveness Summaries and Decision Documents before work begins on-site. At a minimum the Department of Health and EPA should be notified so they can be on-site to monitor work activities. This did not occur for the Interim Remedial Action for Hillside 881 and we have been assured this will not happen again.

Response to Comment 22

EPA and CDH were aware of the start times for the 881 IM/IRA, as it was included in the draft IAG schedules. The Parties agree that this is a proper and needed procedure and will evaluate the impact on the IAG schedules in order to accommodate reasonable delivery times and review times. The IAG schedules shall be adjusted accordingly, if any impacts are discovered. The Parties agree that, prior to any work commencing, the public shall have access to the Responsiveness Summary at least 10 days in advance of any initiation of actual field remedial/corrective activities work.

Comment 23

The RFCC would like to receive the press releases at the same time they are received by the respective agencies for review. At a minimum we would like to receive them at the same time as the media.

Response to Comment 23

The Parties agree that the press releases shall be made available to the RFCC and RFEMC at the same time as the media. If other organizations want to be included, they may contact the Parties and request to be included. Provisions for this will be finalized in the CRP.

Comment 24

The RFCC requests the opportunity to review the Job Safety Analyses (Health and Safety Plans), Work permits, and Excavation permits to ensure precautions are taken to protect the worker and the surrounding community during construction. We have not received these documents for Hillside 881 nor to our knowledge have EPA or the Health Department. No construction should begin until these plans are approved by the appropriate agencies and given public review.

Response to Comment 24

The Health and Safety Plans will be reviewed and commented on by the Parties and be made available to the public. The other documents referred to shall be provided to the RFCC on a case-by-case basis if requested. Construction will not begin until the regulatory agencies have reviewed the appropriate plans related to the facility activity. However, "work permits" and "excavation permits" are not reviewed and approved by EPA or the State.

Comment 25

The RFCC requests the opportunity to participate in any amendments to the IAG. After a full characterization of the hazardous waste sites is completed, it may be necessary to reprioritize the cleanup of the remaining OUs. We want to be informed of any disputes which may lead to a revision in the schedules.

Response to Comment 25

Major modifications of the IAG will be developed and agreed to by the Parties. The State of Colorado is issuing a corrective action permit under its CHWA authority which also addresses the cleanup actions at Rocky Flats. This act requires that major modifications which pertain to sites addressed by the permit, go through public comment. The Parties agree to provide public notification of schedule extensions through the CRPs. Public participation on major changes in the IAG SOW will be addressed through a formal public comment period for the State of Colorado's corrective action permit.

Comment 26

The agencies should prepare citizen guides or summaries of all cleanup documents to expedite citizen review. The guide to the IAG prepared by the Health Department was excellent.

Response to Comment 26

For major activities, such as IM/IRA and final ROD/CAD, the Parties will develop such summaries. This will be developed and included as part of the Community Relations Plan, which contains provisions incorporated by reference (once complete) as requirements of the IAG. All other complex documents will contain Executive Summaries (as all past Rocky Flats documents have) which will explain the contents in clear, concise, and non-technical terms.

Comment 27

The RFCC would like to contribute an editorial to a quarterly newspaper produced by DOE. This should be part of an editorial page devoted to the views from the RFCC, DOE, EPA, the Health Department, and the general public. It is important to generate as much dialogue as possible not only on cleanup but all operations at the Plant. This would be an effective way to reach the broadest public and encourage their participation in all the issues at the Plant.

Response to Comment 27

This provision will be considered as part of the development process for the CRP required by the IAG. If the Parties were to agree with the commentor to include such a provision, any periodic update would be limited in scope to address only cleanup issues, as the IAG addresses only remedial and corrective action issues. If the commentor is seeking a forum to express views on other matters associated with Rocky Flats, there are other mechanisms. The Parties suggest approaching the RFEMC for input into its newsletter as a forum to satisfy the comment.

COMMENTOR: Samuel Williams, RFEMC

The Council recently submitted a policy report to the Governor and the Congressman (copy attached). These comments reflect those recommendations in the Report that are pertinent to the IAG.

Paragraph 14 of the Agreement states that the general purpose of the Agreement is to ensure thorough investigation of environmental impacts of past and present activities and appropriate response action to protect public health, welfare, and environment. We do not find any more specific statement of goals and objectives to be pursued under the agreement. As indicated by Recommendations 16 to 19 of its February 1990 Report, the Council believes that there are certain general guidelines which should be agreed to and pursued by EPA, CDH, and DOE in regard to environmental restoration and waste management at Rocky Flats. This IAG is clearly an appropriate vehicle to stipulate environmental restoration objectives. Such stipulation could prevent disagreements on basic aspects of restoration activities to be undertaken under the Agreement. While waste management and environmental emissions and discharges will not be directly guided by the Agreement, they certainly have "environmental impacts associated with ... present activities" and we believe that the Agreement could also appropriately stipulate objectives in these regards. Our impression is that each of the three agencies generally espouses the guidelines which we would suggest. For the sake of preventing future disagreements and for the sake of public assurance of good intentions, we believe that formal commitments to such guidelines should be included in the IAG. The Rocky Flats Environmental Monitoring Council therefore recommends that stipulation to the following general guidelines be incorporated into the IAG:

NOTE: The RFEMC's policy report is attached to this Responsiveness Summary. No specific responses address the report. The Parties responded to concerns of the report through a direct and separate RFEMC meeting.

Comment 28

Past waste disposal areas are to be restored to allow unrestricted future use.

Response to Comment 28

The Parties fully intend to conform to all environmental statutes and laws which require that permanence in treatment and fully protective standards shall be utilized to achieve cleanup levels. However, while it is not the intention of the Parties to allow "institutional controls" to be utilized as a final remedial/corrective action, where treatment technologies or methodologies exist, there may be areas at Rocky Flats which may be found to require restricted access. By agreeing to conform to the laws and guidelines which govern the IAG, the Parties have agreed to minimize the potential for this to be allowed, where practicable. The IAG will not be revised to state this objective.

Comment 29

Cleanup of off-site contamination is to be a premium objective.

Response to Comment 29

All sites to be identified as having adversely impacted public health and/or the environment shall be given consideration and, as information is developed, prioritization will be established for those sites with the maximum potential for impact. One objective of the IAG is to determine the extent and severity of the contamination of the off-site areas. Cleanup shall be based on this

information. The Parties agree to evaluate and expedite the off-site characterization efforts. (Please refer to Response to Comment 12.)

Comment 30

Environmental restoration RFI/RI work plans are to seek: (a) reduction of risk to present and future generations; (b) avoidance of risk to workers and the public from the cleanup; (c) achievement of unrestricted future use; and (d) cost-effective accomplishment.

Response to Comment 30

The laws and guidelines, that the draft IAG references, include specific requirements to achieve all of the objectives above. These laws are specifically incorporated by the IAG at Part 4, Paragraphs 16 through 21 and Part 51, Paragraph 256, and are referred to throughout the IAG. Please refer to Response to Comment 28 above with regard to objective (c) of this comment. No further clarification in the IAG shall be pursued in response to this comment.

Comment 31

There is to be no new disposal of hazardous, mixed hazardous, or radioactive waste at Rocky Flats.

Response to Comment 31

While no disposal permit has been sought at this time, the IAG cannot rule this potential out at this point in the cleanup process. EPA and the State shall be issuing corrective/remedial action decisions. Prior to final decisions, all actions which are proposed are subject to public review and comment. Any opposition to on-site disposal can be presented at this stage of the process. The Parties cannot agree to amend the IAG to preclude an option that may turn out to be the most protective cleanup option. Hazardous wastes generated from future plant operations will be regulated and managed in accordance with the State's hazardous waste laws. Also, please refer to Response to Comment 16.

Comment 32

Hazardous and mixed hazardous wastes are to be treated or stored only in full compliance with RCRA and other applicable regulations.

Response to Comment 32

The draft IAG requires compliance with State hazardous waste laws.

Comment 33

Elimination or minimization of off-site discharge or emission of hazardous or radioactive materials is a premium objective.

Response to Comment 33

The IAG specifically requires efforts to minimize the distribution of pollutants (hazardous substances) under Sections V and XII of the SOW of the IAG. Since these efforts will be required and incorporated into the agreement, no further change of the agreement is needed.

Comment 34

The Rocky Flats Environmental Monitoring Council recommends that the Milestone Schedule for Operation Unit 10 be expedited to the extent feasible in accordance with making cleanup of off-site contamination a premium objective.

Response to Comment 34

As noted in Response to Comment 12 above, the Parties will adjust the schedules to expedite characterization of contamination of the off-site areas.

As indicated generally by the Council's Report, and particularly by Recommendations 1 to 3 and 22 to 25, the Council strongly believes that there must be full and open communication with the public about issues related to Rocky Flats and that there must be opportunity for meaningful public involvement in decisions. The Council believes that public and worker input can be particularly valuable in early planning stages. The Rocky Flats Environmental Monitoring Council therefore recommends that the following community involvement measures be incorporated into the IAG for each RFI/RI work plan and for each of the documents referenced in Section II.A.6 and that they be incorporated into the Community Relations Plan to be developed. Either by direct inclusion or by reference, provision should be made for interim community relations guidelines, to include the following, until the Community Relations Plan is completed:

Comment 35

Information papers, briefly and informally but clearly and openly describing the problem to be addressed, shall be provided to the public prior to initiating work plan development.

Response to Comment 35

As stated in Response to Comment 21, the Parties shall address this concern in the CRP.

Comment 36

Public input, including but not limited to recommendations for objectives and alternatives, shall be sought in initial scoping for work plan development. As appropriate to the project, this may be done by comment period, public hearing, or informal roundtable discussion. Input from Plant workers shall be sought either jointly or separately.

Response to Comment 36

The Parties agree that public input is important and that this needs to be accomplished at the work plan scoping phase. Please refer to Responses to Comments 21 and 35.

Comment 37

Separate Technical Assistance Grants referenced in Section II.A.8 shall be provided for each major CERCLA work plan.

Response to Comment 37

Please refer to Response to Comment 3.

Comment 38

Upon issuance of a statement of dispute in accordance with Parts 12, 16, or 27 of the Agreement, the public shall be notified of the dispute and provided opportunity to submit suggestions for resolution or other comments. Project Coordinators shall consider these comments prior to finally resolving the dispute or submitting it to the Dispute Resolution Committee.

Response to Comment 38

The Parties have addressed this concern through notification to public and municipal organizations. Please refer to Responses to Comments 7 and 8.

Comment 39

Upon issuance of Five Year Plans and annual budget requests for environmental restoration, DOE shall provide EPA, CDH, and the public with clear concise descriptions of the activities provided funding and whether those activities satisfy the requirements of the IAG.

Response to Comment 39

Please refer to Response to Comment 1.

Comment 40

DOE shall provide a publicly accessible computerized calendar of tasks called for in the IAG, their due dates, and status.

Response to Comment 40

There are many software packages which can be utilized to present this type of information on a continuous basis as modifications to the IAG tasks are made and as IAG tasks are completed. It may be more prudent for DOE to provide hard copies of accomplishments on a periodic basis than to attempt to provide the universe of general public with computers and compatible

software. DOE will explore the possibility with public organizations who are interested, to the extent funding is available.

Comment 41

The Council is aware that additional public involvement opportunities may lengthen planning processes for environmental restoration activities which it is just as anxious to see undertaken as are the parties to the agreement. A few extra weeks, however, are minor in comparison to the full time frame for project completion. If the public provides valuable ideas for improving or expediting the restoration activities, the time will obviously be well spent. Also a few weeks during early planning stages are clearly preferable to months of dissension or litigation during the construction stage.

Response to Comment 41

The Parties agree with this general observation. Balancing the extra time needed for additional public involvement with the urgency for meeting schedules is an ongoing concern. Since every milestone is dependent upon successful completion of the previous step, with no allowance for dispute, every date in Table 6 of the IAG will be impacted by inclusion of time for further public review and involvement. However, due to the compelling expressed concern for further public input, the Parties have agreed to develop a CRP which will accommodate this concern, beyond the requirements of the laws referenced in the draft IAG. Several comments above address that additional community involvement will be accommodated through the CRP. Please refer to Responses to Comments 8, 20 through 27, and 35 through 40.

COMMENTOR: Neal G. Berlin, City of Arvada

The City of Arvada commends the Department of Energy (DOE), Environmental Protection Agency (EPA), and the Colorado Department of Health (CDH) in their efforts to draft and reach agreement on the preparation and contents of the IAG. There are, however, some subjects in the draft for which we have concern. Arvada's comments are outlined below:

Comment 42

The City of Arvada is concerned with the seemingly nonexistent role that the public will play in the initial phases of planning for cleanup and remediation of contaminated sites. The public has been left out of much of the environmental planning concerning Rocky Flats for too long. The DOE has an opportunity now to rectify this situation by actively soliciting comments from the public at the earliest point in all appropriate draft planning processes.

Response to Comment 42

Please refer to Responses to Comments 21, 35, 36, and 41. The CRP shall accommodate the municipalities and other public concern on this issue.

Comment 43

In addition, the IAG indicates that DOE will be responsible for coordinating the preparation of a Community Relations Plan in 1990. The IAG does not indicate the scope of involvement which the community will have in drafting the Community Relations Plan. Again, we feel that the public should be involved at the earliest time possible in all planning processes to reduce problems later on in the plan preparation stages.

Response to Comment 43

Extensive guidance is available on the requirements which DOE must adhere to while developing a CRP. This guidance includes conducting extensive community interviews while developing the CRP. Representatives of local governments will be interviewed as part of the CRP development process. DOE has committed to meeting, at minimum, the requirements outlined in the guidance. Also, EPA and the State will review and comment on the CRP as it is developed, as well as its subsequent updates.

Comment 44

As outlined in the IAG, Responsiveness Summaries will be prepared on all public comments solicited during a comment period. It is imperative that all comments be responded to and that work on the operable units not commence until such time as the public review and response to those comments is completed.

Response to Comment 44

As noted in Response to Comment 22, the Parties agree to follow this recommendation.

Comment 45

Off-site contamination of soils, reservoirs, and groundwater is being handled under Operable Unit (OU) 10. Currently, the time schedule for finalizing the RCRA Facility Investigations/Remedial Action (RFI/RI) report for OU10 is slated for May 9, 1994. Remediation, if called for in the RFI/RI, will not take place until after that time. This time schedule is not acceptable to Arvada.

Off-site contamination is a great concern to our citizens and, whether there is a genuine health risk or perceived health risk, the issue needs to be addressed as soon as possible. Undertaking assessment and possible cleanup/remediation at an earlier date is vital to alleviating concerns and suspicions held by the general public. Once scheduled, the cleanup of OU10, or any other operable unit, should, however, not proceed at a pace which compromises the quality of the remediation effort.

Response to Comment 45

Please refer to Responses to Comments 12 and 34.

COMMENTOR: Robert Schultze, City of Broomfield

The City of Broomfield has reviewed the draft Interagency Agreement between the EPA, DOE, and CDH. The hard work and planning involved in developing this agreement is commendable. However, there are several areas where the City feels the document or schedules are inadequate or incomplete.

Comment 46

Information presented to the general public must be nontechnical and concise. Legal and technical jargon should be avoided as much as possible.

Response to Comment 46

The Parties appreciate this comment and will be working to provide "user friendly" information, in addition to making more technical data available. Please refer to Responses to Comments 26, 27, 35, 39, and 40.

Comment 47

Schedules in the back of the IAG should be summarized into a single gantt or pert chart.

Response to Comment 47

Additional "timeline" and summary graphics shall be developed after the IAG is finalized in order to facilitate tracking of IAG milestones by the Parties and the community. The Parties may distribute this information if further requests are received. Please refer to Response to Comment 40.

Comment 48

Opportunities for public participation should be highlighted throughout the agreement, or an appendix added which lists all public comment periods.

Response to Comment 48

The Parties agree to provide this through the final CRP and subsequent updates.

There are two areas of particular concern to the City: off-site land's surface contamination and Great Western Reservoir (Operable Unit 10--site numbers 199 and 200, respectively). Specific comments regarding these sites include:

Comment 49

Great Western Reservoir is an integral part of Broomfield's water supply. In order to serve Broomfield's immediate and long-term water needs, Great Western Reservoir needs to be expanded to a volume three times its current size. The IAG lists Broomfield's Great Western Reservoir as site

200 of Operable Unit 10 in Table 5 (page 52 of 53). The Preliminary RFI/RI Work plan calls for data to be submitted and reviewed, and a health risk assessment for a no action alternative for the reservoir. Clearly, a no action alternative is unacceptable to the City. The City cannot justify spending millions of dollars to enlarge a reservoir that has plutonium contamination in its sediments. Rocky Flats operations contaminated the reservoir and it must be remediated. A risk assessment based on no action is a waste of time. An appropriate means of permanent remediation should be investigated.

Response to Comment 49

The "no further action" remedy option is a required option under Superfund regulations, specifically, the National Contingency Plan (NCP) which governs cleanup actions of Superfund sites requires this (see Title 40, Code of Federal Regulations (CFR), Part 300.430(e)). "No further action" risk assessments, or baseline risk assessments, are predicated on a no action alternative and allow for conservative risk analysis (i.e., if it is not cleaned up and access is unrestricted, the risk of exposure is calculated as high and the baseline risk assessment is conservative; erring on the side of safety). As stated, baseline risk assessments, assuming no further action, are a required option analysis. They do not preclude the agencies from proposing and issuing a decision to conduct remedial/corrective action under a different cleanup option. However, the "no further action" option is required for feasibility/corrective measure study purposes. The option serves a comparison purpose. Also, it is possible, in some cases, that leaving contamination in place may be the safest option (i.e., cleaning it up may present a worse health risk than leaving it there). The Parties do not advocate this option for Site 200 but are required to evaluate the option, along with others, prior to issuance of a final decision. Evaluation of all alternatives will be performed in accordance with the criteria required in Part 300.430(e)(9) of the NCP, with the chief criteria being overall protection of human health and the environment. Also, to further address this concern, commentors should refer to EPA's guidance document *Risk Assessment Guidance for Superfund*, Interim Final, EPA/540/1-89/002, December 1989.

Prior to a final decision, DOE will publish a Proposed Plan and discuss the basis for its preferred option. The Proposed Plan will be subject to public review and comment. EPA and/or the State shall then issue a Corrective Action Decision (CAD) and/or Record of Decision (ROD) based on public input and evaluation of the Proposed Plan.

Comment 50

The schedule in Table 6 (page 23 of 23) indicates that the Final RFI/RI for off-site contamination, including Great Western Reservoir, will not be completed until May 9, 1994. This is not acceptable to the City. The off-site contamination should be moved up in priority and scheduled to be investigated immediately. It is essential for Broomfield's reservoir expansion plans to have the remedial action done on the reservoir and surrounding land as soon as possible. Move OU10 up on the priority list will help address the public perception problem with Broomfield's drinking water and the lack of trust the public has with DOE.

Response to Comment 50

Please refer to Responses to Comments 12, 34, and 45.

Comment 51

The IAG lists contamination of land's surface as Site 199 of OU10 in Table 5 (page 52 of 53). The RFI/RI Work Plan implies that a remedy has already been chosen for this site under the land owner's suit settled July 10, 1985. However, the settlement agreement does not specify a particular type of remedial action, but instead specifies only that remedial action will be completed. The settlement agreement does suggest plowing as one possible form of remedial action. It is the City's position that plowing is not a "permanent remedy," and is, therefore, not an option under SARA. An appropriate means of permanent remediation should be investigated.

Response to Comment 51

The IAG specifies that an evaluation of the effectiveness of remedial efforts at the area be completed. It is the intention of the Parties to develop a remedial/corrective action for the area should data indicate one is necessary. This is consistent with the requirements of the laws and guidelines which govern the IAG. Site 199 shall be investigated in a comprehensive manner, as all sites will be, prior to any final decision. The City's concern regarding the plowing is noted. Further action under the Settlement Agreement is presently unspecified. Any further remedial action will be developed through the IAG cleanup process. The community will be involved in the decision process.

Comment 52

As the landowner of Great Western Reservoir and the surrounding contaminated property, the City would like the agreement to guarantee that DOE accepts all liability for the contamination and all responsibility for the cleanup of these sites. Broomfield wants assurance that it will not be named as a potentially responsible party in the cleanup.

Response to Comment 52

Section 107 of CERCLA defines liability under the Superfund law. The Parties do not have authority to exempt the municipality from any liability it may have. The DOE, through the IAG, has taken on the responsibility to remediate all on-site and off-site areas contaminated by Rocky Flats operations.

COMMENTOR: Annette Barnard, City of Thornton

Comment 53

The proposed alternative, no action, for cleanup of the reservoirs is unacceptable because the reservoirs are used as a drinking water supply. Sediment samples should be collected and analyzed to determine the necessity and extent of cleanup.

Response to Comment 53

These sites will be investigated. Please refer to Response to Comment 49.

Comment 54

An agreement between the Department of Energy (DOE), the State of Colorado, and the affected municipalities should be developed in which DOE accepts liability for contamination of the reservoirs as well as takes responsibility for its cleanup.

Response to Comment 54

By entering into this agreement, the DOE has in fact accepted full responsibility for remediating any known contaminated areas and any contaminated areas to be discovered in the future which may be found to be the result of Rocky Flats operations. This IAG is an enforceable document, governed by laws requiring definition of the extent of potential contamination. No further agreements should be necessary as additional mechanisms for cleanup action. Please refer to Response to Comment 52.

Comment 55

Cleanup of Operable Unit 10, off-site contamination, should be conducted earlier in the process as the public is most concerned with off-site contamination.

Response to Comment 55

Please refer to Responses to Comments 12, 34, 45, and 50.

Comment 56

The remediation schedule should be flexible enough to allow for changes to be made when mitigation techniques dictate additional time and effort are required to assure all public health and environmental concerns are addressed.

Response to Comment 56

The IAG does have provisions for amendment and extensions to schedules for this specific purpose. These provisions are found in Parts 24, 41, and 42 of the IAG. If such amendment or extension of the schedules is needed, then the Parties will adhere to these procedures. Please refer to Response to Comment 25.

Comment 57

Public comment should be solicited when documents are in draft form rather than final form. This will allow the public to actively participate and more readily accept the cleanup measures.

Response to Comment 57

All documents which are presented to the public for comment are draft or proposed (such as draft permits and proposed interim measure/interim remedial action decision documents). Documents and plans are routinely modified to address comments made by the public. Please refer to Responses to Comments 21 and 24.

Comment 58

It is imperative that a thorough and adequate analysis of the contamination from Rocky Flats and appropriate cleanup measures be performed because the effects of environmental contamination on Standley Lake which is a drinking water supply is yet undefined.

Response to Comment 58

The Parties agree with this comment and note that the laws and guidelines which govern the IAG specifically provide for the adequate site characterization of contamination sites.

Comment 59

The City of Thornton's position is that contamination originating from Rocky Flats and its cleanup is the responsibility of DOE and its operators. Furthermore, it is the City's position that remediation from contamination from Rocky Flats should not contribute to costs incurred by the City for operation of its water utility or its ability to comply with future drinking water standards.

Response to Comment 59

The IAG cannot be a mechanism to assure the municipalities that no costs may be incurred as a result of cleanup activities. Should contamination of drinking water supplies be discovered, and remediation, which may interrupt service provided by municipalities be deemed necessary, arrangements for addressing these concerns should be made at the time an impact is identified. The IAG will not be modified to address this concern.

COMMENTOR: Ronald A. Hellbusch, City of Westminster

Comment 60

The construction of an interceptor canal around Standley Lake should be included in the IAG.

Response to Comment 60

The Parties know of no immediate threat, or contamination which is presently being introduced to Standley Lake at this time. However, the Parties realize that the public is very concerned about the safety of the water it drinks. The concern expressed through this comment is based on the potential for an accident, or "unmonitored" release of contaminants. Since no known contamination in violation of water quality standards is present, the Parties agree that an IM/IRA addressing this concern is not needed. However, the IAG does not preclude the municipality from taking additional measures it deems necessary.

Comment 61

The schedule for evaluating off-site contamination should be accelerated.

Response to Comment 61

Please refer to Comments 12, 34, 45, 50, and 55.

Comment 62

Local governments should be involved earlier in the cleanup process.

Response to Comment 62

The CRP will contain provisions for involving the local governments. The local governments do meet regularly to discuss Rocky Flats issues. These meetings could address cleanup concerns if the municipalities would like to coordinate a specific agenda with any or all of the Parties. Please refer to Responses to Comments 21, 35, 36, 41, and 57.

Comment 63

In Table 5, referring to Site 199 in Operable Unit (OU) 10, the Required Action seems to pertain to only lands covered in the landowner's suit settled July 10, 1985. Work regarding off-site soil contamination should extend beyond those limited lands, and examine all areas with elevated plutonium concentration in the soil.

Response to Comment 63

Specifically listing the landowner's suit in OU10 does not exclude any additional off-site areas from future investigation under the IAG. Since 1970, the CDH has routinely surveyed the Rocky Flats vicinity to assess the extent of off-site plutonium deposition in surface soil. Any data which establishes that contamination exists beyond these areas may be utilized in order to develop

work plans to identify the extent of contamination, and subsequent corrective/remedial actions as appropriate. Please refer to Response to Comment 12 as a related issue.

Comment 64

The agreement should provide a provision that recognizes that owners of land which are found to be contaminated as a result of Rocky Flats operations should not be considered Potentially Responsible Parties (PRPs), and that the DOE should bear the cost of all remedial activities.

Response to Comment 64

The IAG cannot exempt landowners from potential liability arising from contamination on their lands. However, this agreement does assure that DOE is committed to address any and all contamination which has resulted from plant operations. Please refer to Responses to Comments 52, 54, and 59.

Comment 65

In Table 5, referring to Site 201 in OU10, the Required Action requires a health risk assessment associated only with a no action alternative. The parties to the IAG should be aware that plans are being made to enlarge the Standley Lake dam, and that fill material from the dam would be taken from the north and northwest sides of the existing reservoir. Furthermore, there is a potential for a regional park to be established at Standley Lake, which would probably also require a great deal of earth work and grading. These proposed actions should be taken into account in the health risk assessment.

Response to Comment 65

The municipality and planning commissions responsible for making decisions on land use should remain apprised of assessment of potential off-site contamination while developing its growth plans. Please refer to Responses to Comments 49, 52, and 53.

Comment 66

Money is available from EPA for local citizens groups under the Technical Assistance Grants (TAG) program. Municipalities apparently are not eligible for these grants. However, the IAG and the Agreement in Principle provides money for both CDH and EPA. Money should also be set aside for the local municipalities to evaluate the cleanup efforts. Westminster is relying totally on City staff to monitor the activities at Rocky Flats, and do not have sufficient personnel or resources to adequately review the cleanup operations at the facility. Consultants with special knowledge in hazardous waste cleanup would be able to provide the expert advice needed in evaluating the cleanup options. Funding should be provided to the Cities to hire such consultants. Approximately \$250,000 should be set aside.

Response to Comment 66

The IAG is not the appropriate mechanism to provide this sort of funding. The Superfund and State Hazardous Waste Laws also do not provide a mechanism to assure such funding. However, EPA is aware that at private Superfund sites, some potential responsible parties (PRPs) have entered into funding agreements with citizen or municipality organizations.

Comment 67

Responsiveness Summaries for Interim Actions should be issued prior to the start of construction. Construction on the Hillside 881 interim action began before the public knew how DOE responded to its concerns.

Response to Comment 67

Please refer to Responses to Comments 22 and 44.

COMMENTOR: Rich Ferdinandsen, Jefferson County, CO Board of County Commissioners

Comment 68

The primary concern of the Board of County Commissioners in regard to the Rocky Flats IAG is that the IAG fails, in the Board's opinion, to adequately address investigation and remediation of the vicinity surrounding the actual plant site. Only Operable Unit 10 seeks to address off-site concerns arising from the operation of the plant. Operable Unit 10 has been given a very low priority among all of the operable units in the IAG.

Response to Comment 68

OU 10 has not been given a low priority. However, it is easy to understand that by being listed as the last OU, it may appear to be a non-priority. The proposed schedules for OU10 were expedited in order to obtain as much information as possible to develop work plans for site assessment. However, the Parties agree to make efforts to address this common concern and expedite the submittal of work plans in the final agreement. Please refer to Responses to Comments 12, 34, 45, 50, 55, and 61.

Comment 69

Comprehensive off-site investigation and potential remediation must be given a much higher priority and greater scope within the IAG. People must continue to live and to work in the surrounding area. Presently, the burden is upon these people to ascertain for themselves whether they or their property are at risk.

Response to Comment 69

Please refer to Responses to Comments 12, 34, 45, 50, 55, 61, and 68.

Comment 70

Informed decisions by local governments cannot be made without detailed information concerning off-site contamination, nor can decisions on these issues afford to be held in abeyance for many years to come. The responsibility and the burden to develop detailed and comprehensive information concerning potential off-site contamination should be placed with the owner and operators of the site.

Response to Comment 70

Please refer to Responses to Comment 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, and 69.

Comment 71

Placing as low a priority on off-site investigation and remediation as does the draft of the IAG only serves to unnecessarily prolong the health and safety concerns which the residents and landowners presently endure and also continues to cripple the ability of local governments to appropriately plan for needed services for the area's residents and businesses.

While it is not doubted that contamination which exists on the plant site itself must be contained and kept from spreading off-site, the public's legitimate concerns about their safety from off-site contamination demands that Operable Unit 10 be expanded in scope and given the highest priority.

Response to Comment 71

Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, and 70.

Comment 72

Given the substantial credibility problem which exists between the public-at-large and the parties to the IAG, the Board of County Commissioners would urge that the parties to the IAG provide a more detailed mechanism for the public to participate in some meaningful way with monitoring and inspecting the cleanup process.

Response to Comment 72

The Parties believe that involvement in the final CRP will provide a mechanism to address this concern. Representatives of Jefferson County will be interviewed during development of the CRP in order to obtain input for community involvement. Also, please refer to Response to Comment 47.

Comment 73

Additionally, given the scope and duration of the events under the IAG, changes to the Agreement seem inevitable. In order to regain and maintain the public's trust, the IAG must assure that the public be given early and ample notice of any changes to the IAG. Meaningful public participation in the process is the only way of regaining the public's trust.

Response to Comment 73

Please refer to Responses to Comments 25 and 56.

Comment 74

Finally, the Board of County Commissioners would urge the parties to the Agreement to involve local governments more heavily in the process. Local governments have a unique perspective to offer which this Board believes could be beneficial to resolving issues and creating solutions to the problems involved with this site.

Response to Comment 74

Please refer to Response to Comment 72.

COMMENTOR: Melinda Kassen, The Environmental Defense Fund (EDF)

We support the efforts of DOE, the EPA, and the CDH to begin, through the IAG, to address the massive cleanup tasks that Rocky Flats presents. However, we have several concerns with the IAG and urge the parties thereto to renegotiate certain of its sections.

Comment 75

RCRA generally encourages greater public access and input to the decision making process than does CERCLA. For example, any time a RCRA permit, including requirements for closure plans, is significantly amended, there is an opportunity for public comment, whereas CERCLA allows public comment almost solely on the remedial investigation and feasibility study.

Although the proposed Community Relations Plan will attempt to broaden the opportunity for public input, given that public comment has all too frequently been ignored in the past regarding the dangers posed by Rocky Flats releases, EDF remains skeptical that the opportunities for public input are sufficient.

Response to Comment 75

The Parties intend to address this concern by implementing several mechanisms within the CRP which provides for community involvement. Public comment periods are conducted for the sole purpose of responding to public concern and the IAG schedules shall reflect the need for adequate consideration and response to comments. The EDF will be interviewed in developmental stages of the CRP in order to allow input to providing for community involvement.

Comment 76

Also, judicial review under CERCLA is generally limited to reviews of remedial actions which have been "taken." CERCLA, section 113(h). This means that a public citizen must wait to challenge the choice of a remedial action until after the money has been spent and the action completed, at which time, as a practical matter, a court is likely to be less inclined to order a different outcome, regardless of whether a different action might have better accomplished the goals of cleanup. By contrast, if RCRA is the law controlling cleanup, no public citizen need wait until it is, as a real world matter, too late to challenge the proposed cleanup measure; rather, such citizen may go to court upon issuance of the permit that directs the cleanup.

On the other hand, given the history of weak action by CDH regarding activities at the Plant, and the tendency on the part of the State to take DOE's and its subcontractors' representations as to what was occurring on-site instead of independently verifying Plant operations, EDF would be equally wary of giving the state sole authority to regulate the Rocky Flats cleanup. This is particularly true in light of present actions by the Colorado Assembly to create a hazardous waste commission that would have the authority to set state policy under the Colorado Hazardous Waste Act (CHWA), conduct rulemaking under the CHWA and hear appeals of certain hazardous waste permit and enforcement decisions made by CDH staff.

Under these circumstances, it is not only imperative that EPA and CDH exercise vigorously their respective rights to dissent to the other agency's execution of cleanup decisions, but also that the public be allowed a meaningful role in shaping the Rocky Flats cleanup. Although the IAG goes farther in bringing the public into the process than have other federal facility agreements that EDF has reviewed, it still does not ensure that the public will be notified of or provided a role in making the important decisions that will govern cleanup at the Plant over the course of the next several decades. Giving the public a meaningful voice in cleanup is crucial to the community's

acceptance of this plan. In several sections of "Comments on Specific Parts and Paragraphs of the IAG," below, EDF has noted where the IAG and Statement of Work lack adequate provisions for public involvement.

Response to Comment 76

The Parties intend to address this concern by careful development of the CRP and evaluation of the IAG schedules. Please refer to Responses to Comments 21, 35, 36, and 41.

Comment 77

"Milestone" schedules set forth in Attachment 2, Table 6 set the pace of cleanup for the ten known Operable Units (OUs).

This approach contains at least one immediate and significant flaw: the treatment of the off-site contamination.

The parties to the agreement must recognize that off-site contamination poses a qualitatively different type of threat, and creates a different level of public concern than does the on-site contamination, notwithstanding that concentrations of certain contaminants on-site may exceed by orders of magnitude off-site concentrations.

For that reason, EDF applauds the requirements in the IAG that the historic information and preliminary health risk assessment be completed by February 1991. At the same time, however, it is distressing, indeed, to find that the parties to the IAG apparently do not anticipate that DOE will perform an IRA for OU-10. OU-10 should not be grouped in the third category and that, at the very least, OU-10 should be scheduled for interim remediation, if not complete remediation, as soon as is feasible.

Response to Comment 77

The Parties appreciate the observation of the commentator regarding concern given to OU10. Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, 70, and 71.

Comment 78

To a lesser extent, and because of the possibility that contamination found in the priority drainages (OU-4) could also migrate off-site more quickly than will contamination found at others of the interior OUs, this OU should also be given priority over the remaining OUs in the third category.

Response to Comment 78

This observation is appreciated. It is certain that equal priority emphasis cannot be placed on all the OUs. It is realistically impossible to achieve all the site assessment and cleanup at the same time. Keeping in mind that there is an air migration pathway of concern, the Parties have decided OU4 should not take precedence over OU2. Also, considering the concentrations of organics in ground water at OU1, OU4 should probably not take precedence over OU1. However, there may be merit to adjusting the schedules pertaining to OU4 to take precedence over some of the actions under OU3. The Parties evaluated this concern and will address this in the final IAG. The final SOW will show the reprioritization of the priority drainages.

Comment 79

EDF recognizes that one reason the parties may have anticipated (by including in the milestone schedules) performing IRAs at OUs -1, -2, and -3, but not at -4 or -10, is that they have more information regarding the first three numbered operable units than is available for the others. However, it does not necessarily follow that, particularly with regard to OU-3, those sites for which there is the most information are those which constitute the gravest threat to the public health, safety, and the environment. Priority for remediation should be based on the immediate risks to public welfare and the environment. By failing to require early remediation of the off-site contamination, the IAG and Statement of Work do not adequately protect the public.

Response to Comment 79

The IAG has provisions for modification which would allow for changes in priorities as further information is gathered. Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, 70, 71, 77, and 78.

Comment 80

Although DOE appears to be accepting state authority over the Rocky Flats site pursuant to the CHWA and RCRA (see paragraph 8), the IAG sets forth no conclusions of law regarding RCRA applicability. The final version of the IAG should remedy this failing.

Response to Comment 80

The Parties believe that the commentator's concerns are sufficiently addressed in Part 1 (Jurisdiction) and Part 9 (Determinations, specifically paragraphs 85 and 86) of the IAG.

Comment 81

Paragraph 4 of the IAG indicates that "[p]ortions of Attachments 2 and 3 that relate to RCRA and CHWA are Compliance Orders on Consent issued by the State pursuant to section 25-15-308(2)." On the other hand, paragraph 103 of the IAG, without using the word "order," states that, "[c]hapter Two and other RCRA and CHWA provisions of this Agreement ... shall be enforceable by any person, including the state, pursuant to any rights existing under section 7002(a)(1)(A) of RCRA" which section of RCRA is the section governing enforcement of "orders." Read together, it is unclear whether the IAG itself, or just the Statement of Work and Work Plans, are "Orders" as that word is specifically used in RCRA. Because EDF believes that it was the intent of the parties to the IAG to make the IAG itself, as well as the relevant portions of the Statement of Work and Work Plans, Orders that any person could enforce under section 7002 of RCRA, the parties should revise paragraph 103 so that it clearly expresses this intent.

Response to Comment 81

The Parties agree to modify and/or clarify paragraphs 4 and 103 by stating that portions of this IAG are an order for the purposes of 7002 of RCRA to address this concern.

Comment 82

Alternatively, the IAG should be filed in court as a consent decree. If this were done, citizens could intervene and become a party to the proceedings which would mean that they get all communications among parties and that they could communicate directly to a judge their concerns about any disputed issues. Without some similar mechanism, citizens will be unable to monitor the implementation of the Agreement, or participate in the future decisions governing cleanup. For example, the Statement of Work, Part II provides no mechanism by which the public will be told of (a) changes proposed to be made or actually made to the IAG, (b) variances requested from RCRA requirements or the resolution of such requests for variance, (c) matters referred to dispute resolution under the IAG, or (d) actions as to which EPA or CDH is asked to grant an extension. These illustrations highlight that, even though this IAG's public participation provisions are far more explicit and provide for greater public input than older IAGs at other DOE facilities, there are still important issues as to which the parties to the IAG have made no provision for public input.

Response to Comment 82

Agreements between EPA and private parties for CERCLA remedial actions must, by law, be formalized as a judicial consent decree. However, similar agreements between EPA and other federal agencies must, by law, be formalized as IAGs. Section 120 of CERCLA specifically addresses federal facilities and lays out the process for how remedial action agreements at federal facilities are to proceed. Section 120 of CERCLA requires that EPA enter into IAGs with other federal facilities as a means of effecting cleanup at those facilities. No mechanism for entering the IAG as a judicial consent decree is provided for by the requirements of Section 120 of CERCLA. As described in Parts 13 and 20 of the IAG, the IAG is enforceable by citizens under the RCRA and CERCLA citizen suit provisions.

Comment 83

EDF believes that Congress' waiver, in section 6001 of RCRA, of sovereign immunity as a defense against states' RCRA enforcement, including (necessarily) the imposition of fines and penalties, could not have been more clear. It is with continuing disappointment that we view DOE's refusal to accept reality on this point. With regard to the IAG, rather than push off until the future additional negotiations regarding state-imposed penalties, at the very least, the parties should work out the mechanisms for implementing such state authority and write them into this IAG. That DOE will be subject to state penalties is inevitable; deferring negotiations serves no purpose.

Response to Comment 83

As the commentor is aware, the issue of whether RCRA section 6001 waives the federal government's sovereign immunity from state-imposed civil penalties has been litigated around the country. The IAG is not the proper forum to resolve this issue. Even if the matter is resolved to require payment of State-imposed penalties, it is unlikely that the resolution would require federal agencies to enter into stipulated penalty provisions in enforcement agreements such as the IAG. Under paragraph 105, DOE is obligated to negotiate such a provision with the State in the event the sovereign immunity issue is ultimately resolved to require payment of State imposed penalties. In the meantime, the State has reserved its rights to seek civil penalties against DOE for any violations of RCRA or the CHWA. Please refer to paragraphs 102, 103, 104, 239, 242, and 244 of the draft IAG.

Comment 84

Part 19 of the IAG allows EPA to impose a stipulated penalty not to exceed \$5,000 for the first week of violation and not to exceed \$10,000 for subsequent weeks, in the event DOE fails either (a) to submit to EPA and the State a primary document required by the IAG, or (b) to comply with any term or condition of the IAG related to an interim or final remedial action. Since the use of the term "remedial action" is a CERCLA phrase, DOE's failure to comply, as described in (b), with any "term or condition ... related to (a) ... remedial action" would appear to be limited to a DOE failure to act as required by CERCLA. However, under (a) DOE's failure to submit primary documents appears to cover the submission of all primary documents, not just those related to CERCLA.

Response to Comment 84

EPA is authorized to assess penalties for IAG violations pursuant to Sections 122(l) and 109 of CERCLA. Therefore, stipulated penalties under Part 19 of the draft IAG may only be imposed for CERCLA violations.

Comment 85

Does an EPA assessment of stipulated penalties bar other persons (including the State) from pursuing penalties or other CERCLA enforcement remedies against DOE for failure to submit primary documents or for failure to carry out a term or condition of the IAG related to an interim or final remedial action which failure leads either to a delay in performance of cleanup or inadequate cleanup?

Response to Comment 85

The Parties believe that the commentor's concerns are already addressed implicitly in Part 48 (Reservation of Rights). Paragraph 241 reserves a citizen's right to enforce state or federal law, and Paragraph 243 does not release DOE from any claim for natural resource damages.

Comment 86

Does an EPA assessment of stipulated penalties for failure to submit a primary document related to RCRA corrective action have any affect on the State's or others' ability to pursue penalties or other RCRA enforcement measures based on DOE's failure to submit primary documents which failure leads either to a delay in performance of cleanup or inadequate cleanup?

Response to Comment 86

As noted in Response to Comment 84 above, the stipulated penalty provision in Part 19 relates only to violations of CERCLA requirements, so EPA could not impose stipulated penalties for failure to submit a RCRA document. Admittedly, this distinction may not have much significance because most documents required under this IAG are simultaneously RCRA and CERCLA documents. Whether the imposition of CERCLA stipulated penalties would affect the state's or others' rights to enforce related cleanup matters is a matter for judicial resolution. As noted in Responses to Comments 83 and 85, the IAG preserves the State's and citizens' rights of enforcement.

Comment 87

Because of the bare minimum nature of the stipulated penalties described in the IAG, especially when compared to the \$25,000 per day that DOE could face for violations of RCRA, the Clean Water Act or the Clean Air Act, EDF is concerned that such penalties not become a cap on enforcement action where other persons, including the State, would have a right to seek judicial or administrative imposition of fines or other order under CERCLA or RCRA. To the extent that the parties of the IAG intended Part 19 to apply only to DOE failures under CERCLA and only when it is clear that EPA is the sole entity with authority to seek a penalty, this should be clarified. In addition, the IAG should state expressly that no imposition of penalties by EPA will affect claims by other persons seeking natural resource damage awards from DOE or its contractors from activities which occurred at Rocky Flats.

Response to Comment 87

The imposition of penalties by EPA (or the State for that matter) will not affect any claims for natural resource damages because the penalties provided for in RCRA, CHWA, and Section 109 of CERCLA are not natural resource damages. They are fines for violating regulatory requirements, not compensation for damages to natural resources. As to the remainder of this comment, the Parties believe that the effect of one enforcement action on another is a matter for judicial resolution. Nothing in the IAG precludes the Parties or citizens from seeking to enforce the IAG's requirements, to the extent available by law. Please refer to Response to Comment 86.

Comment 88

Mention is made neither in this paragraph, nor in the Community Relations Plan set forth in the Statement of Work, Part II, regarding how the parties intend to collect and integrate the public's comments on DOE Work Plans. Since DOE will perform the "guts" of cleanup pursuant to such work plans, public involvement in and acceptance of these road maps is critical to the overall success of the remediation goal of the IAG.

Response to Comment 88

Please refer to Responses to Comments 21, 35, 36, 42, 57, and 62.

Comment 89

Neither the IAG nor the Statement of Work describes how the public can review or comment upon these risk assessment, or whether these risk assessments will be subject to independent, peer review by scientists qualified to perform and analyze the adequacy of risk assessments. They form one of the critical bases for subsequent determinations of the need for and scope of remedial actions. Both because the art of risk assessment is in flux, has come under extensive scrutiny and has been the target for substantial criticism, and because DOE has historically downplayed the risk associated with its activities to an unseemly degree, these assessments must be subjected to open and rigorous debate. Luckily, other panels have recently been named, pursuant for example to the Agreement in Principle signed by DOE and the Governor of Colorado during the summer of 1989, to commence a systematic and defensible risk assessment to the community from operations at Rocky Flats. To the extent possible and appropriate, the risk assessment necessary for the IAG should be done in conjunction with the risk assessments being done by other groups.

Response to Comment 89

The Parties agree with the commentor that the data being developed under the RFI/RI, and risk assessments contained in the investigations will generate data that could be useful to the State's Health Advisory Panel. Paragraph VII.D.1.d. of the IAG SOW requires the Baseline Risk Assessments (BRAs) to be submitted with the RFI/RI reports for each OU. These reports are primary documents, shall be part of the administrative record, and will be made available for public review pursuant to the CRP. The Parties agree to coordinate the activities of the IAG related to risk assessment with the State's Health Advisory Panel in the future.

Comment 90

The IAG should provide for the public availability of all data collected in conjunction with environmental restoration studies and work done at Rocky Flats, something the IAG does not do as presently drafted.

Response to Comment 90

All validated analytical data, plans, and reports completed shall be made available to the public through the Administrative Record, or as specified by the CRP. All other analytical data can be made available for review upon written request.

Comment 91

There is no mention of what, if any, role the parties will allow the public to play if the parties determine (jointly or otherwise) that they want to amend the IAG. The document should set forth how the public will be given a meaningful voice in such process.

Response to Comment 91

Please refer to Responses to Comments 25, 56, and 73.

Comment 92

By virtue of paragraph 237 of the IAG, the public will not be able to see classified information or "Unclassified Controlled Nuclear Information" (UCNI) in documents upon which the State and EPA rely in choosing remedial actions. Paragraph 237 may therefore impede, possibly to the point of illegality, the public's ability to comment upon the proposed cleanup activities.

If UCNI is submitted as a part of any RCRA or CERCLA compliance documentation, then members of the public seeking to review and comment on such materials would not be able to review all of the information considered by CDH or EPA. The inability to review all relevant information impairs the public's ability to make meaningful comments on RCRA or CERCLA activities.

Although EDF understands that the federal government has legitimate concerns regarding national security in the area of weapons production, denying the public access to that information necessary to allow for meaningful comment contravenes the purpose and intent of both RCRA's and CERCLA's open process precepts. It is therefore of utmost importance that DOE limit to the maximum extent permissible by law its use of the "classified" and UCNI stamps.

Response to Comment 92

The Parties intend to meet the requirements of all laws while implementing this IAG. The majority of the information which will be developed during the site assessments and which will lead to remedial action, will not contain classified or Unclassified Controlled Nuclear Information (UCNI) material.

Comment 93

Under traditional definitions, things like "unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance" and procurement delays do not constitute "Force Majeure" such that DOE should be allowed extensions of the milestones set in the IAG.

Response to Comment 93

Please refer to Response to Comment 9.

Comment 94

In IAG paragraph 255, DOE is given the right to raise as a defense for noncompliance with the terms of the IAG that it did not obtain sufficient funding therefor from Congress. EDF strongly objects to the parties allowing DOE the right to raise this defense, notwithstanding the existence of the Anti-Deficiency Act, 31 U.S.C. section 1341. As long as DOE's actions required by, stipulated penalties imposed under and other legal obligations created by the IAG pursuant to RCRA and CERCLA are subject to Congressional appropriations, the State and EPA essentially have agreed to an enforcement authority that is less than they would enjoy against private polluters. Private entities would have to reallocate funds to pay environmental fines; so too should DOE commit to reprogramming money, including money from the operations budget, to be able to comply with all aspects of the IAG.

Response to Comment 94

Like the issue of whether RCRA section 6001 waives the federal government's sovereign immunity from imposition of civil penalties, this matter is also the subject of much dispute nationwide. The State strongly disagrees that the Anti-Deficiency Act (ADA) allows DOE to assert the lack of appropriated funds for cleanup as a defense to its failure to meet obligations imposed by federal or state law, whether in the IAG or elsewhere. Paragraph 255 expresses this disagreement. Nevertheless, the IAG is not the place to resolve this matter. Should this become a live controversy, paragraph 255 allows both sides to argue their respective positions in litigation. Also, please refer to Responses to Comments 1 and 39.

Comment 95

EDF is particularly concerned that this loophole is the size of a barnside in light of recent developments concerning the Fiscal year 1991 budget. It is quite apparent from the request level in the budget that the Executive Branch sent to the Congress, in which DOE seeks a smaller appropriation for environmental restoration than it obtained in the 1990 budget, that DOE is not even seeking sufficient funds to cover Priorities One through Three as identified in the first Five Year Plan, let alone the moneys necessary to cover the additional financial commitments generated by the signing of the IAG. So, less than six weeks after DOE's representative signed the IAG,

DOE is already heading towards a position from where they will not be able to comply with the IAG because DOE did not ask Congress to appropriate sufficient funds. DOE would thus appear already to be in violation of the intent if not the express language of paragraph 250 of the IAG, which states: "DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including but not limited to budget requests...."

Response to Comment 95

Please refer to Responses to Comments 1, 39, and 94. In Part 50 (Funding) of the IAG, DOE is required to seek timely and adequate funding to support activities required by the IAG. Failure to do so would be a violation of the IAG and subject DOE to the enforcement provisions referred to in the IAG.

Comment 96

The radionuclides standards listed in Part XII of the Statement of Work do not reflect the recently adopted standards of the Colorado Water Quality Control Commission. Although the Statement of Work alludes to that rulemaking, now that such standards have been finally adopted, there is no reason not to make the appropriate changes in Part XII, rather than wait and go through an amendment to the IAG pursuant to paragraph 9 thereof.

Response to Comment 96

The Parties agree to address this issue in the final agreement.

Comment 97

Although the action plan (Attachment 2, Table 5) discusses the need for additional ground water monitoring wells only at certain EPA-lead (CERCLA) OUs, it does not appear that all RCRA-regulated units are currently in compliance with that statute's ground water monitoring requirements. For example, CDH staff members have indicated publicly as recently as January 30, 1990 that DOE has still not demonstrated compliance with ground water monitoring requirements at certain units within OU2. Any RCRA-regulated unit not yet certified as in compliance with all ground water monitoring requirements should, by law, be proceeding with closure.

Response to Comment 97

The focus of the IAG is on remedial/corrective action. The IAG does not deal with ongoing regulatory requirements, except to the extent they affect site cleanup. The three RCRA "regulated units" requiring ground water monitoring under the CHWA are: Solar Evaporation Ponds, Present Landfill, and West Spray Field. These units are in the closure process under Part 265 of the Colorado Hazardous Waste Regulations, and are also addressed in the draft IAG under OU3--closures.

Section I.B.11.b and Attachment 2, Table 5 of the SOW establish the process for investigation and potential corrective/remedial action at the sites in OU3. This process is essentially equivalent to development of revised closure plans for OU3 which meet the procedural and technical requirements of the IAG. Milestone schedules for these actions are found in Table 6 of the SOW. Additional monitoring wells may be required during characterization and remediation of OU3 sites.

The State of Colorado issued an Order to Rocky Flats in June 1989 which addressed compliance with State ground water monitoring requirements. The compliance status of these units is being addressed through the ongoing monitoring and enforcement efforts of the CDH Hazardous Materials and Waste Management Division (HWMD).

It is not clear why the commentor referenced OU2 in this comment, as these sites are not RCRA "regulated units" requiring ground water monitoring. However, ground water concerns at OU2 will be addressed through the IAG.

Comment 98

It is clear that CDH has allowed DOE far longer to come into compliance with ground water monitoring requirements at Rocky Flats than it would allow any private entity subject to RCRA; to that extent, the IAG perpetuates a double standard for federal facilities that is simply unacceptable today. CDH must begin to penalize DOE for its ongoing failure to complete fully and to the State's satisfaction with the background ground water study for Rocky Flats and the placement of all necessary ground water monitoring wells. Not until DOE has performed this task will all parties begin to be able to establish with any certainty the extent of ground water contamination caused by and released from Rocky Flats.

Response to Comment 98

Please refer to Response to Comment 97.

Comment 99

It is unclear from the IAG and Attachments whether terms covering the cleanup of EPA-lead units (OUs 4, 9, and 10) and the joint EPA-State lead operable unit where EPA dispute resolution procedures is followed (OU2) will be written into the State's Rocky Flats RCRA Part B permit. If CERCLA cleanup activities address any releases of hazardous constituents from RCRA solid waste management units, and the terms governing the CERCLA actions are not also part of the state's RCRA permit, the CERCLA actions would be occurring in violation of RCRA. This is because section 3004(u) of RCRA requires that a RCRA permit address corrective action for all releases of hazardous waste or constituents from any such unit at a TSD facility like Rocky Flats. 42 U.S.C. sec. 5924(u). EDF believes that this is a point for clarification and may become clear upon issuance of the draft Part B permit, but the parties to the IAG should also write language into the IAG to state expressly that activities designed to remediate all releases from RCRA units, even if such actions proceed under CERCLA with EPA oversight, will nonetheless be included in the Plant's Part B permit as required by section 3004(u) of RCRA.

Response to Comment 99

One of the greatest challenges the Parties faced in negotiating the IAG was reconciling the overlapping authorities of RCRA/CHWA and CERCLA. All three statutes apply to the cleanup at Rocky Flats. Except as otherwise noted in this paragraph, each cleanup decision is both a "remedial action" under CERCLA and a "corrective action" under RCRA/CHWA. The Parties believe that the IAG clearly explains that both the State and EPA must approve all remedial/corrective action at the site, except as provided in Paragraph 153 (basically, except for Operable Units that are determined to contain only radioactive contaminants). Paragraph 141 of the IAG states that the designation of Lead Regulatory Agency does not change the jurisdictional authorities of EPA or the State. Paragraphs 156 through 158 make clear that the State makes a corrective action decision for each Operable Unit (except for purely radioactive Operable Units),

regardless of whether it is the Lead Regulatory Agency. Procedurally, the corrective action decision is made through a CHWA permit modification. Thus, the requirements of RCRA Section 3004(u) are met. The State's corrective action permit does contain provisions relating to corrective action for all Operable Units through the Corrective Measures Study/Feasibility Study (CMS/FS) stage, and will specify a remedy for any Operable Unit identified to have hazardous constituents associated with it.

Comment 100

Although there are those who believe that the designation of a unit for treatment under RCRA or CERCLA is a ministerial act, and of little practical import, to the extent that CERCLA units can and should be addressed under RCRA, the State has surrendered its authority and responsibility to make cleanup decisions about those units because, where an OU has an EPA lead, CDH's preference for a specific remedial option will be only one of many factors EPA considers as it selects the actual remedy. By contrast, where the State has the lead, CDH's preference is the deciding factor.

Response to Comment 100

The State has not surrendered any of its CHWA authority or responsibility to make corrective action decisions. Please refer to Response to Comment 99.

Comment 101

In addition, it is likely that cleanup standards imposed under CERCLA will be less stringent than those which would be required by RCRA. RCRA's goal for ground water cleanup is generally restoration of background quality. By contrast, CERCLA's case-by-case determination of standards can be largely driven by cost considerations, which is likely to result in a less stringent cleanup standard. And, EPA can waive RCRA standards under certain circumstances even where such standards are applicable, or relevant and appropriate. (That the State can take this issue to dispute resolution is a positive aspect of the IAG, but such dispute will still be resolved, ultimately, by EPA.)

Response to Comment 101

All cleanup actions must meet both CERCLA and RCRA standards, as required by paragraphs 15 and 16 and Part 23, among other provisions. The Parties will select remedies that are protective of human health and the environment. This will be achieved by placing a high emphasis on public health and environmental protection standards, rather than economic considerations. CERCLA allows costs to be considered making remedial decisions only in choosing between remedial alternatives that provide equivalent levels of environmental protection. Under CERCLA, EPA has the authority to waive Applicable or Relevant and Appropriate Requirements (ARARs) in certain defined situations. Neither EPA nor the State has such authority under RCRA/CHWA. Paragraph 107 of the agreement specifically leaves open for judicial determination the question whether EPA's waiver of an ARAR affects the State's authority under RCRA/CHWA. Disputes over ARARs go through the "EPA-lead" dispute resolution process, but if no agreement is reached in this process, the State has reserved its rights to seek judicial review. The final arbiter is a judge, not EPA. EPA-State disputes over remedial/corrective action go through a "joint" dispute resolution process that requires consensus. If the two agencies do not agree, each may seek to enforce its decision in court.

Comment 102

EDF strongly urges the parties to designate signators who will bind not only the region/area offices, but their entire agency. In other words, there should be a headquarters level sign off for both EPA and DOE, in addition to, not in lieu of, the Regional Administrator and Rocky Flats Area Manager.

Response to Comment 102

The DOE manager of the Rocky Flats Office will be delegated authority from the Secretary of DOE, and the EPA Regional Administrator for Region VIII has been delegated authority from the Administrator of EPA to sign the IAG and bind their respective agencies to the terms and conditions of the IAG. Both the DOE and EPA delegation documents are a matter of public record.

Comment 103

In addition, due to past concerns about how the unitary executive concept is applied when one agency has been given the authority to enforce federal law against a sister agency, EDF also believes that an "approved by" signature line for the Department of Justice should be added to the IAG, not to make that Department a party to the Agreement, but to avoid any questions of enforceability of various IAG provisions in the future.

Response to Comment 103

The Parties believe that the IAG is enforceable as it stands and that a Department of Justice signature line would not add or detract from the agreement's enforceability and is therefore unnecessary. The IAG contains numerous provisions addressing its enforceability by the Parties and by citizens (Parts 13 and 20), provides for assessment of stipulated penalties where DOE fails to comply with the IAG (Part 19), and specifically reserves EPA and the State's ability to seek to impose their requirements on DOE (Part 29) and other parties (Part 48).

Comment 104

Given that RCRA section 3004(v) requires corrective action for releases off-site from units that received wastes after July 26, 1982, do the parties have sufficient information to have made OU10 an EPA lead, rather than, at the very least, a joint lead OU?

Response to Comment 104

The contamination of off-site areas is attributed to releases which occurred from the 903 Pad Area, which was utilized prior to the 1982 time frame. Also, the contamination is expected to be radioactive rather than chemical in nature. The Parties agree that, at this time, this is an appropriate lead designation.

COMMENTOR: Eugene DeMayo, Sierra Club (SC) and RFCC

In general, this document represent a milestone in Rocky Flats history. If fully enforced the full extent of environmental contamination will be much better understood by both the public and the regulatory agencies. This agreement seems to be enforceable and comprehensively covers a much needed and long awaited preliminary cleanup evaluation. I hope that this agreement can become a model for other Superfund sites in the nation.

Specifically, a few items should be addressed:

Comment 105

Chapter 1, Part 4, #20 (1.4.20) on page 12 indicates that any action completed under this agreement will be the final action at an OU, and any site not addressed by this agreement cannot be claimed in the future to need any cleanup. Given the lack of comprehensive knowledge about these sites it seems more likely than not that new information could require, for the protection of the public and the environment, a reassessment at any of the sites. This section should be reworded to take into account the possibility of future actions being needed even after this agreement has been implemented.

Response to Comment 105

While it is the intent of the Parties, as described in Paragraph 20, to perform a single comprehensive remediation program in a manner that is protective of human health and the environment, the IAG provides avenues for additional work if it is needed. Paragraph 191 specifically provides a mechanism for the Parties to determine that additional work is needed and for assuring that DOE performs that work. Paragraph 239 reserves EPA's and the State's rights to, inter alia, require additional work if (1) violations of RCRA are discovered which are not covered in the IAG; (2) new information is discovered regarding hazardous substance or hazardous waste management, including information on releases, which is not addressed through the IAG; and (3) EPA or the State determine that such action is "necessary to abate an imminent and substantial endangerment to the public health, welfare, or the environment."

In addition, pursuant to Paragraph 217, EPA will revisit any remedial action that results in hazardous substances, pollutants, or contaminants remaining on-site at least every five (5) years to assure that human health and the environment are being protected. As a result of this review, and after consultation with the State, EPA may require DOE to undertake additional work.

Finally, Paragraph I.B.3 of Attachment 2 to the IAG requires DOE to notify EPA and the State of "any newly identified or suspected releases or threats of release" from anywhere on the site. This information, along with other information generated during site investigations, may serve as the basis for EPA and the State to require an IM/IRA pursuant to Paragraph 150 of the IAG and Paragraph I.B.10 of Attachment 2 to the IAG.

In summary, the opportunities exist for EPA and the State to require additional work and work not otherwise anticipated in the Statement of Work to the IAG (Attachment 2) if necessary to protect human health and the environment. The Parties do not believe it is necessary to modify the substance of Paragraph 20. However, the Parties will change the language in the final IAG to clarify the intent of Paragraph 20.

Comment 106

3.13.105 (page 33) says that "In the event ... the U.S. Supreme Court rules that RCRA Section 6001 waives the federal government's sovereign immunity from State-imposed fines and penalties"

It is inappropriate for this agreement to authorize or insist that a ruling of any level of the judiciary of United States be ignored. It will be necessary for this section to be changed to allow renegotiations on this agreement even if a U.S. District or Circuit court finds that sovereign immunity is considered waived by RCRA.

Response to Comment 106

As noted in the Response to Comment 83, the State has reserved its authority to seek civil penalties for violations of RCRA or CHWA, and a district court or circuit court ruling in the State's favor would not likely require DOE to negotiate a stipulated penalty provision. Thus, paragraph 105 goes beyond what a judicial ruling that RCRA Section 6001 waives immunity for penalties would include. Also, please refer to Responses to Comments 99 through 103.

Comment 107

2.18.121 (page 40) discusses that DOE will not need a RCRA or CHWA permit for any portions of remedial/corrective action which are "conducted entirely on-site." It is not clear what is meant by "entirely on-site." This should be clarified by specifying that no emissions, via any route (such as water, air, or blowing soil), will leave the site.

Response to Comment 107

The Parties agree emissions resulting from corrective/remedial actions at Rocky Flats should be prevented to the greatest extent practicable. Activities related to work plans, decision documents, implementation plans, and operation and maintenance shall be conducted in a manner to minimize the potential for this to occur. These documents will be available for public review in the administrative record.

Comment 108

5.30.185 (page 68) is essential to the ultimate enforcement of this agreement and must be left intact.

Response to Comment 108

The Parties agree not to change this language, unless formal agreements are made to resolve the cost reimbursement issue to the satisfaction of the Parties.

Comment 109

5.44.231 (page 86). A copy of the Administrative Record should also be kept in the Front Range College Library along with the other documents concerning Rocky Flats that are kept there.

Response to Comment 109

Paragraph 231 of the draft IAG and Section II.A.1. of the SOW will be amended to reflect this.

Comment 110

Attachment 2, II-A. (page 14). Community outreach and/or community interviews should specifically be required to include community groups that focus on Rocky Flats issues. The community's most interested and knowledgeable citizens are likely to be members of these groups.

Response to Comment 110

The Parties will include community groups that focus on Rocky Flats issues. The Community Interview Plan (CIP) for the CRP will reflect this.

Comment 111

Attachment 2, II.A.4.a. (page 16). Public information meetings should be specifically required to be held on weekday evening hours.

Response to Comment 111

Most of the public meetings associated with Rocky Flats are conducted on weekday evenings. The CRPs shall reflect this concern to the extent practicable.

Comment 112

Attachment 2, II.A.5. (page 17). Obtaining a copy of the meeting record should not require a written request. A phone call request to the DOE community relations contact should specifically be considered adequate.

Response to Comment 112

Mechanisms such as sign-up sheets at meetings can assist in obtaining meeting records. The CRP shall accommodate this concern to the extent practicable. The Parties require a written request to assure a record is established regarding responses.

COMMENTOR: Sharon Clark, League of Women Voters of Colorado

Comment 113

In general, the League commends the IAG's public participation provisions. The IAG and its related attachments call for the creation of a Community Relations Plan (CRP) which, at a minimum, shall comply with the mandates of CERCLA and the NCP. Legally, of course, the parties to the IAG can do no less.

In view of the gravity, complexity, and history of waste management and contamination problems at the Rocky Flats Plant and in view of the widespread community distrust resulting from these problems, the League urges the parties to the agreement to go further in providing for the public's role under the IAG.

Community Relations in Superfund: A Handbook is widely regarded as a model for community relations. Our community needs to have its trust in government restored; it needs the best CRP imaginable. The handbook provides the best possible model for the CRP, and the League urges the DOE, EPA, and CDH to amend the IAG by substituting the handbook as the minimum standard for the CRP in place of the legal minimums.

Response to Comment 113

The CRP must be modeled after the EPA guidance referenced above. This is a requirement of Part 44, paragraph 229 of the draft IAG and Section II of Attachment 2 of the SOW. Also, it is important to note that the IAG and the requirements to be developed in the CRP, which will be an enforceable document of the IAG, will go beyond the minimum legal requirements specified by applicable laws.

Comment 114

While the IAG provides for the resolution of interagency disputes, it does not provide for public participation in the resolution process. This omission is unacceptable. Important policy considerations and decisions implementing the IAG are likely to be the subject of any dispute serious enough to call for the resolution process set forth in the draft agreement. The public has a legitimate role to play in weighing the positions and substantiating factors each agency would assert in the resolution process, especially where the outcome of the process could result in modifying the IAG.

Response to Comment 114

Please refer to Responses to Comments 7, 8, and 38.

Comment 115

The IAG should, at a minimum, provide for a public hearing and opportunity to comment whenever the IAG is materially altered as a result of the resolution process. A material alteration is one that goes to the substance of the agreement.

Response to Comment 115

Please refer to Responses to Comments 25, 56, 73, and 91.

COMMENTOR: Paula Elofson-Gardine, Concerned Health Technicians for a Cleaner Colorado (CHTCC) and RFCC

Comment 116

On 881 Hillside, there was a distinct failure to address community action, especially through the CERCLA TAG group known as the Rocky Flats Cleanup Commission. We would like to know that in this and future actions and decisions that the process will allow for more proactive citizen involvement.

Response to Comment 116

Please refer to Responses to Comments 23, 44, and 67.

Comment 117

The Colorado Department of Health has been a distinct problem in terms of being able to effectively interface and include the public. We urge that there be an increase in funding for the CDH in order that they be able to attract and keep qualified, competent personnel, especially in the radiation division. The public must be able to have confidence in the monitoring of this facility as well as those charged with doing the monitoring.

Response to Comment 117

The Agreement in Principle between the State of Colorado and DOE provides partial funding for State oversight related to this agreement. Additional funding provisions for the State are found in Part 31 of the Agreement. With regard to the State's ability to interface with the public, the concern of the commentor is appreciated. The Parties believe efforts are being made to increase the effectiveness of the State's efforts. For example, the recent "Citizen's Guide to the IAG" has received many compliments from the general public and municipalities. This document was developed by the CDH. Also, please see Response to Comment 2.

Comment 118

Migration of contaminants from construction activities still has not been addressed. There is deep concern that the public's desire for protection during this process has been ignored, as construction around the 881 Hillside was commenced without notification to the public beforehand. Demeing or temporary buildings as containment structures was not addressed.

Response to Comment 118

The Parties disagree that any discernible facility employee and/or environmental and/or public health threat has been proven to have occurred as a result of the recent activities at Hillside 881. However, the Parties are gathering further information on the activities at 881. The construction limitation criteria identified in the Responsiveness Summaries and required as a condition for site activities to proceed are adequate for protection. The Parties agree to take further steps to assure these actions are followed as prescribed by procedures of the Site Health and Safety Plans and Plan for Minimization of Contaminant Dispersion.

Comment 119

We would like to see more monitors around remediation sites at 90° angles 100 yards distance from construction/remediation activities. The public is not engendered with a sense of security with the prospect of the DOE and EG&G out there ramrodding around with backhoes without a reasonable level of monitoring going on. There needs to be a risk analysis done regarding the spread of these contaminants through the process of construction, etc.

Response to Comment 119

The Parties agree that verification of no migration of contaminants is important. The cleanup activities for IM/IRA should provide for evaluation of ambient monitoring data and adequate notice to the regulatory agencies and the public, should problems occur. The Statement of Work shall be modified to assure all future IM/IRA documents include provisions which address this concern with regard to ambient monitoring.

Comment 120

The ARARs are not realistic as long as they do not take into consideration the synergistic effects of all contaminants, hazardous or radioactive, from each operating unit to be remediated. Standards applied for cleanup activities must be adjusted downward to take synergistic effects into consideration. There continues to be controversy about methodologies utilized for soil testing both on- and off-site.

Response to Comment 120

Please refer to Response to Comment 18.

Comment 121

In assessing risk, the respirable dust component must be accounted for. The quantitative technique that dilutes the sample and minimizes the radionuclides or hazardous constituents is not adequate. We understand that spot checks are being done with a FIDLER before, during, and after construction activities. We would like to have those logs available for public review.

Response to Comment 121

Field sampling events shall utilize surface sampling methodologies agreed to by the Parties. Different sampling methods are utilized for different purposes. The Parties agree to review the adequacy of the sampling methodologies through the work plan efforts of the SOW of the IAG. Also, please refer to Response to Comment 90.

Comment 122

I would like to quote from page 91, Part 49, Force Majeure, "shall mean any event arising from factors beyond the control of a party that causes a delay in, or prevents the performance of, any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident of machinery, equipment or lines of pipe despite reasonable diligent maintenance; ..." here's where I stop. With a facility with a woeful safety record and over 200,000 deferred work maintenance hours, the phrase reasonable

diligent maintenance is an oxymoron. This clause gives the facility an easy out that must be removed. This facility is already in poor shape, falling apart at the seams. They must be held accountable and responsible for all incidents at this facility. With the incredible resources at their disposal, both in technology and in budget, surely they can roll with most events that could occur and keep within reasonable reach of their scheduled remediation activities.

Response to Comment 122

Please refer to Responses to Comments 9 and 1.

Comment 123

Contaminants from the various operable units are not necessarily confined to each particular operating unit. Resuspension and migration of radiation and hazardous materials must be controlled throughout remediation from start of construction of any necessary facilities to completion of the project. A chain-link fence does not contain contaminants, especially with local wind conditions. I would cite the "flyaway" monitoring device that was found in a citizen's yard following high wind conditions in our area that was from the Rocky Flats Plant.

Response to Comment 123

Air pathway, surface, and ground water migration of contaminants is a priority concern. There will be a site-wide Health and Safety Plan and site-specific Health and Safety Plans developed. The IAG requires a Plan for Prevention of Contaminant Dispersion (PPCD) under Section V of Attachment 2 of the SOW. Efforts shall be defined in future plans and documents, subject to public review, in order to minimize or eliminate any impacts. Also, please refer to Responses to Comments 33, 118, and 119.

Comment 124

The timelines indicated for work plans are very ambitious. Many time limits will not be met, as indicated by some already being late. We're very concerned about ability to stop work when problems arise, fixing the problem before moving on. We want to see quality take precedence over quantity, and that this process is done right. We would also like assurances that the public's concerns will be acted upon rather than shuttled aside and ignored.

Response to Comment 124

The Parties agree to evaluate the schedules and adjust the timeframes to address this comment. The IAG specifically addresses work stoppage in Paragraphs 162 through 164, by allowing the Parties to request work stoppage if work is inadequate or defective and likely to yield an adverse effect on human health or the environment or likely to have a substantial adverse effect on the remedy/corrective action selection or implementation process.

Comment 125

The tremendous flow of documents can be a problem for the agencies to keep up with as well as the citizens. Although some of us have a tremendous capacity to review and digest documents such as this, the "kill a forest" program of huge documents coming nonstop can be an overwhelming task at best to accommodate. The Technical Assistance Group program (CERCLA) is in dire need of

adequate funding to assist this process, and allow the public the best opportunity to be able to understand and respond in a meaningful manner to this process.

Response to Comment 125

Please refer to Responses to Comments 3 and 37.

Comment 126

It is important that the public not be led into a false sense of security regarding off-site contamination as the damage has already been done. Great Western Reservoir, Standley Lake, and Mower Reservoir have had over 35 years of discharges from this facility. Hopefully the sediments will be able to be cleaned up in some manner. These bodies of water will have to be remediated in some way. The issue of a diversion canal at this point is ludicrous, as the drinking water supplies have been compromised to some degree already.

Response to Comment 126

The Parties share the concern implied by the comment that adequate and quality data needs to be developed to ascertain the extent of contamination to off-site areas. With regard to the diversion canal for Standley Lake, please refer to Response to Comment 60.

Comment 127

Past remediation activities such as the infamous barrel removal has shown that remediation activities cause dispersal and migration of contaminants to the surrounding area. Despite all of our desires that the off-site areas take precedence, this may not be wise when taking this into consideration.

Response to Comment 127

As mentioned in Response to Comment 123, efforts shall be utilized to minimize the impacts to human health and the environment during remedial/corrective action efforts. Preliminary data indicates that concentrations of contaminants off-site are low. If future data verifies this, then the concern expressed in this comment should be diminished.

Comment 128

In the final analysis, is all this an exercise in futility? Even in times of crisis, the public has not been warned of emergencies. It is crucial that at least the informed public (for example a representative of the Rocky Flats Cleanup Commission) be included in beginning phases of decision-making. This is especially true in the reassessment of the Maximum Credible Accident Scenarios and the Emergency Response Plan.

Response to Comment 128

The Parties do not believe that public involvement efforts to be taken under the IAG are an exercise in futility. The primary purpose of the CRP is to assure timely and adequate public participation. The site Health and Safety Plans, the Standard Operating Procedures, and

Implementation Plans will consider scenarios related to incidents which could occur during cleanup activities, and preventative or mitigating actions.

Under the June 1989 Agreement in Principle between the State of Colorado and the DOE, CDH and the Colorado Division of Disaster Emergency Services (DODES) must: (1) update the emergency response program for the Rocky Flats Plant; (2) conduct training jointly with DOE for local governments which could be affected by an emergency at the Plant; and (3) assist local authorities with respect to possible incidents involving hazardous or radioactive materials at the Plant. This is an ongoing effort, but is not being addressed specifically in the IAG. For more information on the emergency response plan and the Maximum Credible Accident Scenarios (MCASs), contact the CDH Rocky Flats Program Unit at (303) 355-6252, or DODES at (303) 273-1786.

Comment 129

As the Rocky Flats Nuclear Weapons Facility continues to operate, it will continue to generate waste and discharge radioactive and hazardous emissions to our air, water, and soil. You cannot have cleanup concurrently with continued operations. The only way to have real cleanup is to close this nuclear dump.

Response to Comment 129

The IAG has provisions for addressing releases to the environment which may present a threat to human health and the environment. Any activity found to be adversely impacting the environment or public health will be addressed through the IAG or an appropriate enforcement mechanism.

COMMENTOR: Kim R. Grice, RFCC and Committee Against Radiotoxic Pollution (CARP)

In order that the public may better perceive that there is credible oversight during remediation of Superfund sites at Rocky Flats, we highly recommend that said parties publish monthly a Site Progress Report which would include but not be limited to the following information and data:

Comment 130

Brief description summary of work performed and by whom

Response to Comment 130

The regulatory agencies of the IAG agree and will make these reports available as a requirement of the CRP. Some of the information gathered during oversight activities may be used for enforcement action purposes, and, therefore, may not be released to the public until the action is a matter of public record.

Comment 131

Dates site was inspected by CDH and EPA and by whom

Response to Comment 131

Please see Response to Comment 130.

Comment 132

Equipment log (type used, hrs. used, rad inspections, detox, owner)

Response to Comment 132

Please see Response to Comment 130.

Comment 133

Worker log (# used, hrs. at site, individual radiation badge counts, daily radiation count on worker clothing at end of shift)

Response to Comment 133

This information may be subject to restrictions of the U.S. Privacy Act. However, if requested, an evaluation to what extent the information is available to the public can be made. Please refer to Response to Comment 130.

Comment 134

Site specific Wind Rose data (direction, speed, frequency, shutdowns)

Response to Comment 134

Please see Response to Comment 130.

Comment 135

Site specific Soil Sampling (when, how, where within site, % of respirable dust, characterization, etc.)

Response to Comment 135

Please see Response to Comment 130.

Comment 136

Site specific Air Monitoring (when, type of, locations, data, etc.)

Response to Comment 136

Please see Response to Comment 130.

Comment 137

Weekly inspection reports on worker compliance to OSHA Regulations

Response to Comment 137

The facility does have procedures in place which are in conformance with the National Contingency Plan (NCP) (40 CFR Section 300.150) and Occupational Safety and Health Administration (OSHA) standards (29 CFR 1910.120). Also, please refer to Response to Comment 15.

Comment 138

Removal of Soil (characterization, cu. yds., deposited where, when, how)

Response to Comment 138

Please see Response to Comment 130.

Comment 139

Water Seepage (characterization, amount pumped, when, where to)

Response to Comment 139

Please see Response to Comment 130.

Comment 140

Minimum of two pictures of current construction and a site layout

Response to Comment 140

Please see Response to Comment 130.

Comment 141

The Site Progress Report should be compiled and copies given to the individual members of the Rocky Flats Cleanup Commission within 20 days!

Response to Comment 141

The Parties agree to develop the information for public distribution in as expedited a manner as possible. Certain data reporting requirements, such as analytical turnaround times, may impact the extent to which this can be accomplished. Also, please note that the regulatory agencies may choose to utilize such information for purposes of enforcement actions. All material and information to be provided by Responses to Comments 130 through 141 above have the potential for not being released to the public until the enforcement action is taken. The Parties agree to minimize this potential to the extent feasible due to the public's concern for availability of information.

COMMENTOR: Glenna Smith, Communities United for Environmental Safety (CUES)

Comment 142

The agreement looks as if it is very comprehensive. We are pleased that cleanup at Rocky Flats is being addressed and to have the opportunity to comment.

Off-Site Contamination - The schedule for off-site contamination cleanup should be moved up. Although we realize it is necessary to conduct studies to determine the extent and nature of the off-site contamination, this should be a higher priority.

Response to Comment 142

The Parties thank the commentor for the positive input. Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, 70, 71, 77, 78, and 79.

Comment 143

Dispute Resolution - The dispute resolution process does not allow for public participation. The only options afforded us is to bring suit against the DOE or contractor if we feel that they are not in compliance with the agreement. This causes delay instead of avoiding it. Perhaps a citizen representative could take part in the dispute resolution process.

Response to Comment 143

Please refer to Responses to Comments 7, 8, 38, and 114.

Comment 144

Disposal of Waste - Under the "roadblock" currently set up regarding waste removal and the 1,601 storage limit imposed by Governor Romer, the IAG is limited in its ability to conduct IM/IRA measures. The agreement should address this issue in some way as it will play in integral part in cleanup of the plan.

Response to Comment 144

Final decision documents, required by the IAG, will address IM/IRA issues. The IAG does not address the 1,601 cu. yd. storage limit. Please refer to Responses to Comments 16, 28, and 31.

Comment 145

Progress Reports - Progress reports should be made available at the monthly RF Environmental Monitoring Council meetings.

Response to Comment 145

Please refer to Responses to Comments 11, 12, 72, and 130 through 141.

Comment 146

Administrative Record - Secondary documents should be included as part of the administrative record and made available to the public.

Response to Comment 146

Secondary documents shall be made available to the public upon request. However, due to the extensive volume, and non-crucial nature of information content expected to be included in secondary documents, the Parties disagree that they should be included in the Administrative Record.

Comment 147

Information Repositories - A "check-out system" should be developed so that documents are more readily accessible. Several copies of reports could be kept at the information repositories and checked out at least 2 days at a time. This would not be too difficult as a log will be kept of the administrative record. A system such as this would allow citizens who work 9-5 to access the information.

Response to Comment 147

Through development of the CRP, the Parties will be seeking further input from the public on the needs of the information distribution system, and incorporating procedures, to the extent possible, to address concerns such as those stated in this comment.

Comment 148

EPA and CDH Personnel - A provision for increased funding should be addressed so that both the EPA and CDH have the necessary resources to hire additional employees to ensure that DOE and its contractors comply fully with this agreement. Given the scope and extent of the agreement it appears that additional personnel will be an absolute necessity.

Response to Comment 148

The Parties appreciate the comment and agree this is an important aspect to achieving a successful cleanup effort. Please refer to Response to Comment 2.

Comment 149

Dispersion of Contaminants - A provision should be included which addresses the dispersion of contaminants during cleanup measures and what efforts will be taken to ensure that dispersion will be kept at an absolute minimum.

Response to Comment 149

The Parties agree that this is an important matter. The IAG does address this concern, as stated above in Comments 33 and 123. Please refer to Responses to Comments 33, 118, 119, 121, 123, 127, 134, and 136.

Comment 150

Quality Assurance - To ensure that the Quality Assurance/Quality Control procedures are adequate, an independent expert (engineer, hydrologist, geologist, etc.) should be consulted during the work performed under this agreement.

Response to Comment 150

There will be extensive oversight activities conducted by all Parties. Peer review, in addition to DOE's and its contractor activities, encompasses evaluations of data quality and conclusions, thoroughness, adequacy, and completeness of quality assurance/quality control (QA/QC) procedures. The Rocky Flats Plant currently has engineers and scientists from the University of Colorado, Colorado State University, University of Arizona, and the U.S. Army Corps of Engineers under contract to examine and peer review project plans and reports. Contracts with the Colorado School of Mines and the U.S. Geological Survey are being initiated.

Comment 151

Five-Year Review - This review should occur more often than every 5 years.

Response to Comment 151

The Parties appreciate the concern expressed in the comment due to the recognized need for constant evaluation of the remedial/corrective actions and the provisions of the agreement. However, there will be many multiple activities, monthly reports, and Proposed Plans which will be presented for regulatory agency and public review. These many opportunities shall afford ample chance to identify extensions and amendments to the IAG prior to the Five-Year Review provision.

Comment 152

Extensions - "A delay caused by another Party's failure to meet any requirement of this Agreement" is not a good cause for an extension. This allows DOE to continue "extending" cleanup actions.

Response to Comment 152

The Parties agree that it is not good cause to extend the schedules for unjustified reasons. This clause is provided simply to recognize the fact that if delays are not noticed in a timely fashion, the failure to meet any requirement of the IAG will inevitably result in a delay, which will need to be recognized. It is not the intention of the Parties to allow unjustified schedule slippage. That is why the agreement and justification requirements of Part 42 are included in the Agreement. The Parties want to assure there is adequate cause for extension.

COMMENTOR: Evan Freirich, Esq., RFCC

First, I would like to applaud Admiral Watkins and the Department of Energy. The Ahearne Commission and Tiger teams have shown that not only are there substantial safety and environmental problems at the plant but also that if the problems are to be addressed in the future the plant needs to be more concerned about worker safety and the environment than production. Getting rid of Rockwell was a very positive step in that direction.

Second, I would like to applaud the Environmental Protection Agency. For the longest time EPA was pretty much a non-player out at the Flats because of the lack of funding and jurisdictional problems. Nat Miullo and the EPA with at times the necessary assistance of the FBI have forced there to be a new candor regarding the plant. The EPA seems to be looking over everyone's shoulder now and I credit them with the increased accountability of DOE to the public.

Finally, the Colorado Department of Health suffering from much of the same problems as EPA, no money and no clear jurisdiction, have played their political cards well. Now they monitor much of what comes out of the plant and have the funding to do some long-term health studies.

I applaud you all because I want you to know that as a longtime critic of the plant I do believe these efforts have been sincere and will result in a safer environment for all of us. But now that I have patted everyone on the back, I want to say that even if there have been many improvements I do not believe the efforts of EPA, DOE, or CDH to date will be able to restore the public's confidence such that as we proceed with the cleanup of the plant the public will understand and believe that what is being done will result in any significant change.

Comment 153

To convince the public Rocky Flats is going to be cleaned up properly, government must open its doors to the public and let them see and understand the changes that are happening on the inside. To accomplish this two things must happen; first, the public must be given direct access to all phases of the cleanup process, and second, increased resources must be made available for that purpose.

By direct access I mean members of the public should have easy access to all cleanup related information in a timely fashion. Not only should EPA, CDH, and DOE be able to comment on the drafts but also representatives of the public should be in the "loop." In addition, members of the public should be able to inspect the cleanup sites and should be able to do their own monitoring. In addition, I think the public should have a representative on the various dispute resolution committees and other cleanup oversight committees. Note I have not advocated giving the public any regulatory authority, merely the ability to monitor the process and make recommendations when appropriate.

Response to Comment 153

The Parties appreciate the commentor's concerns. There have been several comments regarding the access to documents and public involvement in dispute resolution. The Parties will attempt to address these concerns satisfactorily. With regard to public comment on drafts and access to documents, please refer to Responses to Comments 21, 35, 36, 42, 57, 62, and 88. With regard to public participation in dispute resolution, please refer to Responses to Comments 7, 8, 38, 141, and 143. Several previous Responses to Comments address public involvement in cleanup efforts, such as reporting. In the past, DOE has allowed public groups to visit the sites. However, due to required training, safety concerns, and liability concerns, it may not be feasible to allow members of the general public to be at the sites, conducting inspection functions, while remediation/corrective action is being implemented.

Comment 154

To accomplish this DOE, EPA, and other agencies must fund these efforts. To a lesser extent the Rocky Flats Cleanup Commission is a prototype of this idea. Funded by the Superfund legislation in the amount of \$50,000, the Cleanup Commission is totally autonomous from Rocky Flats regulators. Our only connection is through our funding which comes from EPA. The only restriction placed upon use of this money is that we cannot do original research or institute legal actions. Unlike other citizen watchdog groups or the proposed independent oversight commission, the Rocky Flats Cleanup Commission directors are not appointed by any government or political official. I think the commission sentiments come closest to representing the general public and would be an effective litmus test for public acceptance of your efforts.

Response to Comment 154

Please refer to Responses to Comments 3, 37, and 125.

Comment 155

By funding I mean that the public should be able to hire its own consultants to review the plans and maintain a small oversight staff to liaison with the agencies. I think quite often government looks bad because its critics haven't had the resources to do a thorough evaluation of the matter involved. We need to replace uninformed "jabs" with either knowledgeable "punches" or as due, endorsement. Funding for these efforts should come out of the money already earmarked for the cleanup of the plant. I see no reason the public cannot be hired as a consultant to evaluate cleanup activities just as you might hire Dames and Moore to study the hydrology of a site. The \$50,000 the Cleanup Commission has to do this job with is only a beginning. One estimate I have heard is that we need \$50,000 for each of the ten Operable Units or \$500,000. The \$500,000 figure is based upon the assumption that the TAG program originally envisioned by Congress intended \$50,000 per Superfund site which usually has one operable unit. Unfortunately Rocky Flats has ten and therefore a much greater amount is needed. I will not claim to have made any careful analysis at this point of what our true financial needs would be. I would be happy to prepare a specific proposal detailing the needs and costs of such a project, if my idea solicits further response. I would hope to match the government funding 10% from private sources such as environmental groups and private foundations. I think money from private sources is important because it will help convince the public quite frankly that we have not been bought off.

Response to Comment 155

Please refer to Responses to Comments 3, 37, 125, and 154.

Comment 156

I believe giving direct access to the cleanup and funding a public evaluation of its progress is the only hope you have to restore the public confidence. I might also add that to date my interactions with the various agencies and officials regarding Hillside 881 has convinced me that outside informed scrutiny will make a better cleanup of that site. If a half million cannot be found for this task then I believe that even if you do clean up Rocky Flats that the public will never believe it.

Response to Comment 156

The Parties appreciate the several comments related to this matter for public funding. Presently, the EPA provisions under the TAG program are limited (see Response to Comment 3). While the Parties to the agreement cannot change these provisions, we will continue to work with the TAG group to relay this message in hopes that further change in the provisions will be made in the future.

Comment 157

Specific Recommendations

Allow the public to have a much greater advisory role in the cleanup.

Direct access to all phases of cleanup activities.

1. *Increase agencies' budgets for making documents available to public.*
2. *Support Front Range Community College repository.*
3. *Citizen physical sampling, monitoring, and inspection*
4. *Citizen participation in dispute resolution process*
5. *Accept recommendations during all draft phases of proposals*

Response to Comment 157

Please refer to Responses to Comments 11, 12, 21, 35, 36, 42, 57, 72, 88, 62, 130 through 141, 150, and 153.

Comment 158

Fund above efforts.

1. *Increase funding of IAG program to \$50,000 per operable unit*
 - a. *Funds to come from cleanup budget*
 - b. *10% matching funds from private sources*

Response to Comment 158

Please refer to Responses to Comments 3, 37, 125, 154, 155, and 156.

COMMENTOR: Tom Ambalam, P.E., Concerned Citizen

Comment 159

As a city official of Northglenn and a citizen of City of Arvada, I was concerned about the lagging efforts to cleanup Rocky Flats site for the last few years. With recent pickup in activities, I am pleased to see the federal and state agencies proposed a statement of work for remedial action.

Response to Comment 159

The Parties appreciate the comment and hope to generate further public support through future activities.

Comment 160

I glanced through the Interagency Agreement. To me, the breadth and the depth of the details in the document show the attention to the concerns of the people. It is gratifying to know all of our effort is finally going to pay off in terms of revitalizing public trust and of make feds comply with their own laws.

Response to Comment 160

The Parties appreciate the comment.

Comment 161

The cities should be pleased with the outcome so far. You and your office should be proud of your contributions. We all know there is much that needs to be done, but I am confident that with our dedication we will get there.

Response to Comment 161

The Parties agree that the IAG is only the beginning step in a long process and appreciate the positive input.

Comment 162

It is time that people recognize that agencies are run by people too and deserve the credit for what they do. I am proud to say that for the decade of the '90s, the cleanup of Superfund sites by the responsible parties, not the government, could become a crown jewel of USEPA's accomplishments.

Response to Comment 162

The Parties also intend to contribute to these accomplishments.

COMMENTOR: James S. Stone, P.E., Stone Environmental Engineering Services, Inc.

Comment 163

The Federal Facilities Agreement and Consent Order (ORDER) for the cleanup of the Rocky Flats Nuclear Weapons Plant (RFP) lacks accountability. The foxes are still guarding the hen house and the plan is not practical.

Response to Comment 163

The Parties disagree with this comment. The IAG is a complicated, but thorough, document which, for the first time, delineates specific goals toward cleanup of the Rocky Flats facility. The IAG delineates specific enforcement authorities of EPA and CDH, and also preserves the citizen's lawsuit provisions related to environmental statutes. In addition, nearly all activities that will be performed under the IAG will undergo public review.

Comment 164

The plan of the ORDER is not practical:

It is not enforceable because the DOE, EPA, and CDH cannot police themselves.

Response to Comment 164

Same response as above. The requirements in the IAG are enforceable by EPA, CDH, and citizens.

Comment 165

There is no priority list relative to public safety and the environment. The pounds of plutonium found recently in the ductwork that could have caused a criticality, the past pollution from the large fires, the general attitude of most plant workers regarding safety violations, ground water pollution through contaminated soil that is migrating towards drinking water supply reservoirs, etc., are apparently treated as just rumors, instead of urgent tasks to be corrected.

The plan should simply:

- Describe the general problem and goal
- Describe and prioritize the tasks for remedial action.
- Schedule time and estimate cost.

This would allow the Governor to decide on repairing or removing the RFP. I believe that the detailed soil data on inactive sites are superfluous details at this stage.

Response to Comment 165

The Parties disagree with the commentor, although they understand the desire to simplify the process, which is complicated. The environment, and impacts to it, are difficult to quantify. Unless careful planning and site characterization, with adequate public participation is provided for, the cleanup efforts are destined for unsuccessful results. The Parties believe the IAG

conforms with best technical planning abilities and meets the requirements of environmental laws which govern the cleanup process.

Comment 166

The time schedule of four years for planning and six years plus for remedial action is ludicrous. This entire program from a decision on weapon needs through to the opening of this ground for industrial development should not take more than five years.

Response to Comment 166

The Parties believe that the commentor has underestimated the scope and magnitude of the needed actions to precisely define the extent of contamination at Rocky Flats. Also, the agreement does have provisions for IM/IRA, which will be initiated within one year of the final agreement.

COMMENTOR: Frank J. Blaha, Concerned Citizen

Comment 167

Impose time schedules upon the EPA/CDH requiring their timely review of documents. These deadlines and schedules should be explicitly identified. In this manner the Rocky Flats Plant will not be held accountable for a non-timely review by the EPA/CDH.

I do not feel that a sufficient response to this comment is that the EPA/CDH are regulatory authorities and are not subject to the terms imposed upon the regulated community. If the IAG is a binding document on the Rocky Flats Plant, it seems appropriate that the IAG be binding on EPA/CDH as well. After all, the Rocky Flats Plant cannot meet its scheduled deadlines without the input of EPA/CDH. Similarly, placing the entire burden of compliance with schedules on the Rocky Flats Plant is absurd given the fact that the input of EPA/CDH is a requirement of the IAG.

Response to Comment 167

The regulatory agencies disagree. The time frames defined in the agreement include "built in" review periods of the agencies. In fact, while operating under the draft agreement, the agencies were able to substantially expedite reviews on initial plans for OU2 as requested by DOE and its contractors. The regulatory agencies are committed to meeting the "built in" review time frames in order to expedite the cleanup efforts. Also, there are no statutes which provide enforcement authorities to penalize the regulatory agencies should they agree to such time frames. There are provisions in the IAG which allow for amendment of, or extension to, the schedules. These provisions are found in Parts 41 and 42 of the draft IAG.

5.0 RESPONSES TO VERBAL COMMENTS

COMMENTOR: Nancy Heil, Westminster City Council, City of Westminster

Comment 168

The City of Westminster generally supports the proposed interagency agreement, as we believe this will bring about the cleanup of Rocky Flats in an orderly fashion. The agreement properly spells out which agent will be responsible for the oversight in each of the operable units and provides a timeline for the activities which must take place at each site.

The IAG (interagency agreement) also represents a cooperative approach to actually solving the problem at hand, which is cleaning up the environment and protecting the health and safety of the workers at the plant, and residents of the surrounding community.

Response to Comment 168

The Parties appreciate the support for efforts to develop the IAG and agree with the commentor's observations.

Comment 169

Westminster offers the following comments and recommendations relating to the proposed IAG.

First, Westminster believes that the IAG should contain a provision for the construction of an interceptor canal around Standley Lake. We believe that the three agencies planning the IAG, along with the City of Westminster, realize that such an interceptor canal is the most effective means to protect Standley Lake from contamination and to restore public confidence in the subject water supply.

The interceptor canal would route Rocky Flats effluent and runoff around Standley Lake, not only during scheduled discharges, but also provide protection from unknown discharges, accidents, or spills.

The IAG would be an ideal place for the three agencies to recognize the need for such a canal and provide schedules for its construction.

Response to Comment 169

Please refer to Response to Written Comment 60 submitted by the City of Westminster and to Response to Comment 126.

Clarification Question from EPA

Just as a point of clarification, you mentioned the intercept for Standley Lake should come through the mechanism in the IAG for Interim Remedial Actions (IRAs). Some of them are specifically spelled out. Is it the intention of the City to specifically request that the IAG look at that option as an interim remedial action to prevent known contamination coming from the site?

COMMENTOR: Dave Kaunisto, City of Westminster

Comment 170

I think we would like that to be looked as part of the IAG.

Response to Comment 170

Please refer to Response to Comment 60.

Comment 171

Westminster believes that the schedule for evaluating off-site contamination should be accelerated. There is a need to answer, once and for all, whether the off-site areas present a threat to the public and what should be done to clean up the site, if necessary, allowing four years to simply develop the plan, with an unknown additional length of time to actually implement the cleanup is unacceptable.

There does appear to be a danger that off-site areas would be recontaminated if they are cleaned up prior to the cleanup of on-site areas. It is also likely that there would be more of a chance for human contact with off-site areas, rather than those on plant site. So it is important to verify that these areas are safe.

Response to Comment 171

The IAG has been negotiated to require compliance with CERCLA, RCRA, and the CHWA, and will investigate off-site areas by acceptable scientific means. Data gathered by the Parties will be used to determine the extent of off-site contamination and to assess the risk to public health and the environment. Every effort will be made to quantify and distribute information to the public regarding off-site areas.

In order to minimize impacts of cleanup efforts at all OUs, a plan to prevent dispersion of contamination is required by Section V of the SOW during investigative and remedial efforts.

Presently, the State of Colorado is engaged in an exercise to gather off-site soil contamination data. As these efforts go forward, should they reveal that contamination is at a level higher than presently believed, and that this level is of a public health or environmental concern, action can be taken under the IAG. Several comments above address expediting the schedules for the off-site areas, as well as preventing migration of contaminants. Please refer to Responses to Comments 12, 33, 34, 45, 50, 52, 54, 55, 59, 61, 63, 68, 69, 70, 71, 77, 78, 79, 118, 119, 121, 123, 127, 134, 136, and 149.

Comment 172

Efforts should also be made to speed up the entire cleanup process. Studies have already been underway for five years, and the deadline from the IAG allows another ten years. Westminster believes that work should be done in a more timely fashion.

Response to Comment 172

In a written comment, found at 61 above, the City of Westminster indicated that it would like the schedules for investigation of the off-site areas moved up in priority. This comment appears to address all schedules. While expeditious cleanup was a major concern in developing the schedules, there is also the concern for a quality and scientifically sound approach. The cleanup tasks for Rocky Flats are complex and will require careful implementation. The Parties have given careful thought to the schedules and as a result of public comment will review the schedules, particularly in reference to the off-site areas. Please refer to Response to Comment 61.

Comment 173

There's a real need to involve the local government much earlier in the cleanup process so that they may be involved in developing the solutions, rather than just being allowed to comment on the solutions developed by Rocky Flats.

Westminster believes it would be able to contribute a great deal to the process and identify early on what solutions might or might not be advisable.

For instance, the Hillside 881 cleanup calls for discharge of the effluents from the treatment process to the interceptor trench, where it will eventually reach Standley Lake.

This is totally unacceptable to Westminster, and we would have been able to help develop a preferred alternative to that discharge if we had been involved in this decision-making process at the front end.

Response to Comment 173

The Parties agree that there is a need to involve the local governments in a more effective manner. Please refer to Responses to Comments 47, 62, and 72.

COMMENTOR: Barbara Moore, RFCC

Comment 174

There are two sides I will address on the IAG in tonight's hearing. Number one, the Federal Facility Agreement and Consent Order, also known as the IAG, is riddled with loopholes which favor the parties of the agreement.

If the construction of buildings is to serve as an example, what I seek is a plan that allows DOE and EG&G to shove their deadlines through to escape their completion of background studies of soil surveys. They may find legal loopholes in the IAG that will explain why they don't have to do their homework.

Response to Comment 174

The IAG is designed to specify the conditions under which the Parties shall jointly carry out their respective cleanup roles. Until the development of the IAG, there was no comprehensive plan or enforceable document available, except for the 1986 Rocky Flats Compliance Agreement. Since that time, much information and data has been accumulated which allows for a more comprehensive and specific approach to cleanup. The Parties recognize that the public's expectations are high, especially for achieving results toward cleanup. These expectations should be high. However, these expectations can lead one into seeing provisions which are required by law, or included to allow effective decision-making, as being "loopholes" for poor performance.

The development of the IAG is a complicated matter. The agreement needs to be strong, in order to assure adequate compliance with environmental and human health protection standards. Equally as important, the agreement needs to be flexible, in order to address changing priorities, new data, and the ability to make effective judgements as cleanup efforts proceed.

There are always problems which develop with these types of cleanup efforts, as with any major undertaking in the real world. It is the intention of the Parties to identify and address these problems, in partnership with the community, in order to achieve the results the IAG is designed to produce. Also, please see Response to Comment 95.

Comment 175

The building site for 881 is not a known waste site so construction proceeded after a quick monitoring of the site. They escaped having to follow strict regulations because the building site is not a known waste site. The excavated soil was treated like clean soil and dumped in the landfill. If the soil was clean, it no longer is clean now.

The subcontractor did not need to be provided with a copy of the IAG agreement because the site is not a known waste site.

Response to Comment 175

The Parties disagree that the activities created any adverse impacts to the environment. The commentor does express a valid concern as to the accountability and adherence to procedures the IAG establishes. These concerns will be addressed by developing site work plans and health and safety plans which are provided to subcontractors. The Statement of Work shall be amended to reflect this.

Comment 176

Number two, the IAG does not address where recovered radioactive waste will go for ultimate disposal. With plutonium production due to start up again, the waste that will be generated there, coupled with the recovered waste, will create competition for available storage space until WIPP is open. We need to know where this waste will be stored.

Response to Comment 176

Please refer to Responses to Comments 16, 28, and 31.

Comment 177

Number three, regarding quality assurance of sampling and tests. Chapter 5, Part 37 states, "If quality assurance is not completed within the timeframes specified in the statement of work and subsequent work plans, raw data or results shall be submitted upon the request of EPA or the State within that period and quality-assured data or results shall be submitted as soon as they become available." This is not acceptable.

Why bother doing quality assurance at all? What good will it do if the results of data sampling show a high beryllium count in respirable dust six months after workers have cleaned the site without adequate protection? Encouraging DOE to drag its feet on quality assurance results is a time bomb waiting to explode. I would recommend that the Parties amend the IAG to specify when quality assurances are due and design an enforcement mechanism to force DOE to complete the quality assurances as they become due.

Response to Comment 177

It is not the intention of the Parties to allow work to move forward without adequate quality control/quality assurance requirements being met. However, this language is included in the IAG in recognition that oftentimes data validation (which is an integral part of QA/QC programs) can be a lengthy process. In the event this process delays availability of information, this clause allows the Parties, and the public, access to data which may lead to important decisions for expedited cleanup. The Parties will leave the language as it is, with the understanding that every effort will be made to minimize the occurrence of situations where data validation, or any QA/QC procedures, is not completed in a timely manner.

Comment 178

Number four, administrative record. Chapter 5, Part 44 says, "DOE shall maintain the administrative record at Building 60 at the Rocky Flats plant." If it is not going to be kept there, then amend the IAG to state exactly where the administrative record will be kept and maintained.

Response to Comment 178

The Parties will change the IAG to reflect this.

Comment 179

Number five, Attachment II, Articles 5 and 6 state, "Any individual may obtain a copy of the public meetings by submitting a written request." This needs to be amended to read, "Upon receipt of written request, DOE will within 14 days mail out said copy of meeting."

Response to Comment 179

To the extent possible, the Parties agree to provide information in as timely a manner as possible. It is the experience of the Parties that meetings can be complex and involved. In this case, a 14-day time frame is not achievable. In the past, the public and the Parties have found it convenient if meeting attendees sign a distribution form at the meeting in order to obtain minutes or transcripts. The Parties shall make every effort to be timely in responding to those who request this information.

Comment 180

Number six, the IAG goes into great detail about dispute resolution, which provides a method for EPA, the State, and DOE to settle any disputes they may have in regard to how to carry out the terms of this agreement.

Sure, EPA, State, and DOE are responsible to carry out this agreement. But it is John Q. Public that will ultimately pay for this cleanup. What does John Q. get for his money? He gets the opportunity to voice his objections as to how the cleanup is taking place. However, John Q. may as well tell his objections to his goldfish for all it really matters.

If the parties to the IAG decide not to take our comments and suggestions into consideration, guess what? They don't have to. The only real dispute resolution John Q. has is to spend more of his own money and take EPA, State, and DOE to court.

I urge that the Parties include a citizen dispute resolution in the IAG. If a citizen dispute resolution is not provided, the EPA, State, and DOE should not be surprised if the Courts are assisting the Parties in writing and rewriting every little thing.

Possibilities exist that so much time would be spent in litigation, there would not be enough time to get through all ten OU sites. I challenge DOE, State, and EPA to demonstrate your desire for gaining public trust and confidence by unanimously agreeing to a citizen dispute resolution in the IAG.

To conclude, it is obvious to me a lot of hard work, time, and tax money was spent creating the IAG. I find it alarming that the Parties did not find it obvious that John Q. Public was needed in the beginning. The Parties and the public would have benefited from John Q.'s contributions.

If the Parties want the public trust, then I say that the Parties should first trust the public. Prove to us that the parties are listening by sending Responsiveness Summaries out on a timely basis, but more important by actually using some of John Q.'s ideas and suggestions. Demonstrate to us that our words are not falling on deaf ears.

Response to Comment 180

The responsibility for these final determinations is placed on the regulatory agencies, by law. Please refer to Responses to Comments 7, 8, 38, 114, 143, and 153.

COMMENTOR: Evan Freirich, Esq., RFCC

Comment 181

Members of the panel, member of the audience, my name is Evan Freirich, and I'm testifying here tonight as a private citizen. I'm also proud to be affiliated with the Rocky Flats Cleanup Commission.

To me, what the IAG is really about is power. The parties to the grievance, the Department of Energy -- are the Department of Energy, the EPA, and the State of Colorado.

It is through these parties indirectly that the public is represented. This, by and large, is the way of a representative form of government, and probably to give the public direct power over these matters would be inefficient and unworkable.

But with Rocky Flats, you have a unique problem because for the last 40 to 50 years, for a variety of reasons, the public's proxy in these matters, the Parties have abused the public's trust by being not only negligent in the handling of this facility, but also at time hiding the truth about the damage that was done.

This has led to, I believe, a conclusion on the part of the majority of the public that our government cannot be trusted to handle the problem of Rocky Flats in a way to protect the public's best interest.

The manifestation of this crisis of confidence is obvious: class-action lawsuits, public demonstrations, civil disobedience, and the increasing importance of these issues at the ballot box.

As a participant in many of these activities for the last 12 years, I would have never believed the public's interest could effectively be represented by the government at Rocky Flats.

But as of late, there have been some extremely promising signs; and at this point, I would like to applaud some of the changes that have taken place. First, I would like to applaud Admiral Watkins and the Department of Energy, the Ahearne Commission and Tiger teams have shown that not only are there substantial safety and environmental problems at the plant, but also that if the problems are to be addressed in the future, the plant needs to be more concerned about worker safety and environment rather than production. Getting rid of Rockwell was a concrete step in that direction.

Second, I would like to applaud the EPA. For the longest time, EPA was a non-player out at the Flats. This was due to the lack of funding and jurisdictional problems. Nat Miullo of the EPA would at times, with the necessary assistance of the FBI, have forced there to be a new candor regarding the plant.

The EPA is looking over everyone's shoulder now, and I credit them with the increased accountability of the DOE to the public.

Finally, the Colorado Department of Health is suffering from much of the same problems of the EPA, no money and no clear jurisdiction. They have played their political cards well. They claim to be able to monitor much of what comes out of the plant and have the funding to do some long-term health studies.

I applaud you all because I want you to know that as a long-time critic of the plant, I do believe these efforts have been sincere and will result in a safer environment for all of us.

So now that I have patted everyone on the back, I want to say that even if there have been many improvements, I do not believe that the efforts that EPA, DOE, or CDH to date will be able to

restore the public's confidence such that, as we proceed with the cleanup at the plant, the public will understand and believe what is being done will result in any significant change.

Response to Comment 181

The Parties appreciate the positive input. Most of the commentator's concerns were specifically addressed in responding to the written comments forwarded by Mr. Freirich. The Parties intend, through the implementation of the many activities defined in the IAG to achieve a measurable change in the environmental quality associated with Rocky Flats.

Comment 182

To convince the public Rocky Flats is going to be cleaned up properly, the Government must open its doors to the public and let them see and understand the changes that are happening on the inside.

To accomplish this, two things must happen. First, the public must be given -- the public must be given direct access to all phases of the cleanup process.

Response to Comment 182

Please refer to Responses to Comments 153 and 157.

Comment 183

Second, increased funding must be made available to the public to effectively participate in the process. By direct access, I mean members of the public should have access to all cleanup-related information in a timely fashion. Not only should EPA, CDH, and DOE be able to have input on the drafts, work plans, etc., but all that's presented to the public should be in the loop, and I do have the list of documents in the IAG package.

Response to Comment 183

Please refer to Responses to Comments 3, 37, 125, 154, 155, 156, and 158.

Comment 184

And I'll go on and say that it's not -- the problem is not that we don't get access to enough information. Although I've heard it stated it is because we really don't have the vehicles and the resources to respond effectively to it. We don't have the time. None of us do have to read all these documents. I need a bigger house to store these in. I need a secretary to do my typing. And I think that's true for about half of the other people in this room. There's just no way we're going to be able to respond to that volume.

Response to Comment 184

Please refer to Response to Comment 20.

Comment 185

In addition, members of the public should be able to inspect the cleanup site and do their own monitoring, and they should -- I think the public should have a representative on various dispute resolution committees and other oversight cleanup committees.

Response to Comment 185

Please see Response to Comment 153.

Comment 186

No, I have not advocated giving the public any regulatory authority, merely to monitor the process and make recommendations when appropriate.

To accomplish this, DOE and other agencies must fund these citizen-based efforts. To a certain extent, Rocky Flats Cleanup Commission is a prototype of this idea funded by the Superfund legislation in the amount of \$50,000

The Cleanup Commission is totally autonomous from Rocky Flats regulators. Our only connection is through our funding, which comes from EPA. The only restriction placed upon the use of this money is that we can't do original research or institute legal actions. By funding, the public should be able to hire its own consultants and maintain a small, oversight staff to liaison with the agencies for cleanup of the plant.

Too often I have heard that the library at Front Range Community College is going to have the funding that needs to be done. Too often I hear the issue that there isn't enough money to go around. What we are talking about is a one- to two-billion dollar cleanup.

Right now we pretty much have to rely on our government proxies. That might be fine under normal circumstances. But frankly, I don't think John Q. Citizen is really going to forget the history. You really need to give us an opportunity to understand what you are trying to do and present those views along to the public.

The amount of money I figure this would come to is \$50,000 per operating unit. That's a rough estimate. In most places, a Superfund site is one operating unit. Here at Rocky Flats we have 10 operating units. I have heard other stories where it is worse. Fifty thousand dollars is a good enough guess at this point.

In addition to that money, I would hope to see private money match it. I have worked as a fund raiser for about ten years. I know that to try and get money from the private sector is almost impossible. It just won't happen.

But I think we could probably find funding for about 10 percent. I think that's important. It will encourage the autonomy of this public-citizen effort to do an independent evaluation because I am seriously concerned.

Frankly, when we do say that what you do is good, people will accuse us of being bought off. Public evaluation of its progress is the only hope that we have to restore the public's confidence. If a half of a million dollars can't be found, then even if you do clean up Rocky Flats, the people won't believe it. It is like a haunted house. No matter if you say there is no danger, in your heart you are still afraid.

I look forward to your responses. I would be glad to answer your questions. Thank you.

Response to Comment 186

Please refer to Responses to Comments 3, 37, 125, 154, 155, 156, 158, and 183.

Clarification Question from EPA

You stated that you would like to see increased funding to the public groups. I just would like to ask, are you aware that that's something that probably cannot be addressed to this interagency agreement that would probably be a national issue brought up to the Congressional organization?

Comment 187

Well, I think that, for instance, it's a contract thing for the work that can be done, is a contract for the cleanup, I don't see a reason why some of those contracts -- you know, I'll give you an example. We, I know, have raised an issue regarding 881, regarding putting enclosures over some of the areas so that we could keep the dust down as we go.

Response to Comment 187

As the commentor implies, the IAG will be utilized by agency managers to allocate resources and further funding. While this observation has merit, and in a sense the commentor is correct in drawing the analogy that the IAG is a contract, funding matters for federal facilities, state programs, TAG grants, and EPA oversight are not presently within the scope of the IAG. These actions are handled by separate processes.

COMMENTOR: Gale Biggs, RFCC

Comment 188

My concern is with the dust loadings out there and the contaminations in the soil.

I have asked questions as to what percentage of plutonium emissions comes from the facility in terms of reintrained dust and that which comes out of the vents themselves.

The answers that I have been getting, and most everyone agrees that the majority of the plutonium comes from reintrained dust. The numbers range from 60 percent to 99 percent. That says that even if every building was shut down, every fan turned off, and every vent plugged up, that you would still cut off less than half of the plutonium emissions coming from Rocky Flats.

That's staggering. That says to me that, if I might expand just a little bit on my comments, that the whole Rocky Flats facility needs a comprehensive dust control plan. I don't think they have one. They do need one.

I have to share Barbara's concern that simply moving that building directly out of the unit does not exempt it from the constraints of ordinary construction techniques. They are moving dirt. They are disrupting dirt that may have plutonium in it.

It needs to follow very rigid guidelines. Construction vehicles need to be decontaminated. Simply running a counter by them and saying they are clean, and then allowing them to off-site scares me. This is why I started asking the questions as to what written procedures are there for this operation.

I came away very disappointed. For instance, it states in the construction write-up that all construction will be stopped when the wind speed is above 15 miles an hour. I asked to see the protocol and how that would work, and there wasn't any. There is no action, it is just all talk.

There were no studies done to define how often the wind was above 15 miles an hour, and how many hours that is occurred. How can you write protocols if you don't even understand the conditions? So that's something that needs to be taken care of.

Personally, I think 10 miles an hour is better than 15. You start getting dust blowing about 10 miles an hour. Incidentally, this is defined as a 15-minute average because that's the way they collect their data out there.

I guess that's my major concern that we need to see more detail in what is happening out there. We need to have more written protocol simply because some construction activity is just outside the boundaries of the unit doesn't mean it is exempt from the rigid requirements that should be required for all this. Thank you.

Response to Comment 188

This comment is of significant concern to many in the community. The Parties will develop construction criteria, with public input for each specific cleanup action. Also, please refer to Responses to Comments 33, 118, 119, 121, 123, 127, 134, 136, and 149.

COMMENTOR: Melinda Kassen, EDF

Comment 189

I'm the senior attorney with the Environmental Defense Fund, located in Boulder, Colorado. We have had the opportunity to review some of the federal documents, requested with other weapons complex facilities.

I would like to say at this point it is substantially better than its predecessors. But I am going to talk about things that it lacks.

First of all, I have a written document, which is about 12 single-spaced, typed pages. That's been handed in. Those are our written comments.

I would like to highlight a couple of things from those comments and also talk about one thing that I know is not in the IAG and is not going to be in the IAG, but I think, as a practical reality, that you all need to be thinking about it. It was alluded to by Barbara Moore earlier, and that is that there needs to be someplace to send the waste that you are going to be cleaning up. That has got to be a part, not only of the schedules, but also probably as a statement of work because treatment for the WIPP is likely at this point.

You're going to see a facility that requires more than just a site barrier. Treatments of waste-bound for Nevada and treatments to deal with the land ban. All of those things are going to affect the schedules that are in the IAG. I think that it is important for the agencies to recognize that.

Response to Comment 189

The Parties appreciate the positive input on the IAG. The Parties recognize that disposal of radioactive waste is an important concern. The ultimate fate of the contaminants cannot be predetermined by the IAG, the RCRA corrective action and CERCLA remedial action processes preclude that. The Parties acknowledge that the commentor recognizes this. The Parties agree that there is presently a clear lack of treatment and ultimate disposal capacity, especially for DOE-type wastes, at this time. However, the investigation and site assessment process must go on, as well as the feasibility analysis, in order to catalyze and provide incentive for development of such treatment and disposal capacity in the nation. Also, please refer to Responses to Comments 16, 28, 31, and 176.

Comment 190

But what I really want to talk about in this context, I guess, is public participation. About six months ago I sat with one of the people who was negotiating this agreement and was asked the raging legal debate about RCRA versus CERCLA and which one is better and would authorize the State or would put EPA in charge of the cleanup with the ultimate authority.

And I think that's like choosing between the devil and the deep blue sea. It's not a good choice. It has to do with history, and part of that may be changing; but as a practical matter, the answer is, I don't like either of those choices. But I don't really think that is a choice.

Response to Comment 190

The Parties recognize the opinion of the commentor. The IAG reflects existing statutory authority for CERCLA, RCRA, and CHWA. The Parties believe that joint review processes protect the public health.

Comment 191

One of the things that this IAG does better than others is give a voice to the public, but it doesn't go anywhere near far enough for what has to happen to make the community comfortable with this agreement, and I think that there are mechanisms available to allow the community to participate in a way which would be productive and retroactive and not simply a drain pushing the schedule back.

There are some specifics. I know that EPA and DOE don't believe that this is necessary, but this could be a consent decree with the Court. If that were true, then a public group could intervene and as an intervener, get all the documents and be able to communicate directly with the judge in the event that there was some type of a dispute.

That's not available. I know that the federal agencies don't want that to happen, but there are other mechanisms.

If you look at the Community Relations Plan, there are a whole lot of things which the Community Relations Plan doesn't list as being important; these are things that the public should be notified about. There are things that could be included.

When DOE asks for a variance from RCRA requirements, that refers to the dispute resolution, actions as to which either EPA or CDH are asked to grant extensions of schedules. All of those things are things that the public should be told are happening.

It is not necessarily the case that in each instance there should be an opportunity for public comment. I understand that could hold the schedule up. However, there has to be a mechanism so the public can understand what's happening to this agreement and the fact that this agreement probably by nature is going to change.

There are provisions in the IAG for modification to the agreement itself. Different from modifications to the RCRA permit. If the IAG is amended, the public has to be notified and allowed to comment on what happens.

I think I mentioned the Statement of Work. That's the nuts and bolts. That's the nitty-gritty of how these things are going to happen; and there is no provision in the Community Relations Plan for those Statements of Work to be given the public before they are finalized, or for there to be mechanisms by which the public can comment on the Statements of Work.

There is also the issue of both the OU-specific and site-wide risk assessments. I think those risk assessments are in part going to drive the cleanup because that's one of the ways regulatory agencies make a decision about what the standards are going to be for cleanup.

There is less flexibility under RCRA than there is under CERCLA. But I think those are critical documents. First of all, I think that the parties to the agreement should understand or should recognize that there are other groups out there from the agreement in principle and from efforts even at the national level to have these kinds of risk assessments done.

You don't necessarily need to re-invent the wheel, but it is critical from a community relations standpoint and in terms of cleaning up this plant to the level that it should be cleaned up, that there be independent review of those risk assessments become final in the sense that they get used to drive the numbers and standards for cleanup.

Sampling data, document availability -- there are no provisions in the IAG. It may simply be an oversight, but I assume that the parties would want all of that information under the new approach being heralded out of DOE and heralded out of EG&G.

I would assume that the parties want the public to be able to look at the sampling data and to be able to look at all of the documents.

Paragraph 237 in the IAG is still a concern. That's the paragraph about classified information. I think that -- the Health Department works very hard to make sure that the first Part B did not have classified information. It still remains in the secondary documents.

My concern, as a lawyer, is that although I understand -- first of all, it is going to be hard to do that, at least in part, at least some of the OUs coming up, to keep all of the classified information and UCNI stamps out of Statements of Work, out of the historic information documents.

There is a definite legal clash on one hand between national security considerations and on the other hand between both RCRA and CERCLA's precept that public involvement, that meaningful public comment on these documents and on the cleanup, is necessary.

You can't comment on something that you can't see. That's pretty clear. I just urge all of the Parties. Nationally, DOE has different levels of how often they use the classified stamp and how often they use the UCNI stamp.

I would urge the Parties to this agreement to make sure that those stamps are used in as limited a way as possible so that the public can have access, not just to all the information in the primary documents, but also to have access to all of the information in the secondary documents because frequently that's where the data -- that's where the information is that is going to help you to understand whether what is being proposed is correct or not.

The second thing that I want to talk about is schedules, and whether the schedules conform to what the public wants. Well, from the standpoint of the environment in the one part of the schedule, what is particularly distressing is that the off-site contamination is sort of lumped in with all of the other sites that are not immediately scheduled.

You have essentially four levels of concern. You have 881, which is happening now. You have the 903 pad and trenches, which will happen in '93. And sub-units within operable units. You have interim action happening with 1993, 1994 timeframes.

Then you've got this cluster of all the remaining sites. There is no schedule to do interim action. There is no schedule to do anything.

And then you've got the low priority, which I gather, at least the Parties have some question as to whether there is going to be substantial contamination. All that is required there is a document from DOE which says, "We looked at it, and I don't think we need to do anything because it's not all that bad."

I suggest to you that in terms of public feeling of safety about this plant, that it is critical to pull the operable units and the off-site contamination out of the plant and get that one up front so that can be cleaned up because the contamination -- the concentration of individual pollutants may be higher in some of the ground water that are on-site.

And although the contamination in the soil may be higher on-site, there are people living in proximity, if not on top, some of those individual sites within the off-site area. And I think that it's critical so that I can stop getting calls from people who are wondering whether it's safe to move here. You have got to get the contamination off-site, and I would urge you to move that operable unit up.

Response to Comment 191

Please refer to Responses to Comments 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 75 through 83, 85 through 95, and 97 through 103.

COMMENTOR: Penelope Pegis, Concerned Citizen

Comment 192

I grew up in Golden. I have been battling cancer for 15 years, as have many of the people that I grew up with, including adults and peers and many deaths.

I don't have any idea what the situation is out here in Westminster. I am sure it is phenomenal. Those issues are barely being touched on. The off-site stuff has got to be critical. What is already on-site at Rocky Flats land, you know, has to affect the drinking water and the soil and the down-wind stuff that's going on daily.

For many, many years this has been going on. The agencies that you represent have either been deceiving us, poisoning us, or allowing us to be poisoned without doing anything about it.

Response to Comment 192

The Parties agree that there has been much past activity which has resulted in adverse environmental impact. This is due to practices unacceptable to today's standards, and common to all industrial practices over past years. The Parties know of no definitive data which specifies there have been adverse health impacts to the general public from the operations of Rocky Flats. Further activities are being conducted, through the State's Public Health Advisory Panel in order to respond to this concern, in a more definitive manner, in the future.

Data indicate that there are areas beyond the facility boundaries which are above background radionuclide levels. Much data has been accumulated, reviewed, and distributed to the public regarding Rocky Flats in the past. As further information is developed, this information will also be distributed to the public. While possibly not commensurate with today's standards, the facility has implemented environmental control techniques in the past, in efforts to minimize any adverse impacts to the environment and human health. These efforts are being modernized and improved. There have been several comments that address off-site area prioritization. Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, 70, 71, 77, 78, 79, and 142.

Comment 193

It is very disturbing to me that the only reason that this is now happening is because the lid got ripped off this. If that hadn't happened, this would still be going on. And who knows what's really going on up there.

My understanding of the IAG, as Barbara mentioned in her talk, you know, the agencies represented and the subcontractors and EG&G can do whatever they want up there. Because there is room in the loopholes, that frightens me.

The one good thing that I can see of all of this is that the day when the agencies can operate with impunity are gone. That's all I have to say. Thank you.

Response to Comment 193

While activities may now appear to be expedited and priorities are focused on health and environmental programs, there have been many activities in the past aimed at assessing and minimizing the environmental and human health impacts from Rocky Flats. In September of 1986, the Parties entered into a Compliance Agreement to develop site studies and move toward

modernization of the compliance efforts at Rocky Flats. Most of the information obtained, and actions taken under the 1986 agreement has lead to improved conditions and further knowledge relative to the Rocky Flats environmental programs. Negotiations for this IAG began on May 25, 1989. The Parties recognize that recent events have increased public anxiety and concern. The IAG is intended to provide a specific guideline for cleanup, which should address future actions. Please see Responses to Comments 95 and 174.

COMMENTOR: Kim Grice, RFCC, CARP and Other Organizations

My family lives seven miles east of Rocky Flats. My address is 10161 Wolff Street, Westminster 80030.

I am the chairman of the Committee Against Radiotoxic Pollution, Director of Rocky Flats Cleanup Commission, member of Rocky Flats Alliance, member of W-470 Concerned Citizens, and member of Colorado Association of Realtors.

Comment 194

The public should be aware that many of these remedial actions at Rocky Flats are nothing more than containment measures. How can we clean up Rocky Flats when this facility keeps discharging contaminants into our environment?

Response to Comment 194

The Parties disagree that the actions are strictly containment in nature. The majority of the actions taken to date have been designed to actually treat contaminated ground and surface water to acceptable levels for reintroduction to the environment. This is consistent with the goals set forth by environmental laws for permanent remedies which are referred to in the IAG.

There are provisions in the IAG which preserve the authorities of EPA and the State of Colorado to develop enforcement actions in the case of any illegal releases to the environment. Please see Response to Comment 129. Provisions of several other laws regulate ongoing activities at Rocky Flats in order to minimize impacts to the environment.

Comment 195

The three-party agreement between DOE (amended from EG&G by Kim Grice after proceedings), EPA, and CDH has intentionally omitted independent citizens' oversight. We are told if citizens have a dispute with this agreement or its compliance, we are forced to use legal recourse to settle our complaint.

This is unacceptable. The public wants to be involved in oversight to assure compliance. Who's going to make sure that all parties to this agreement have the public's best interest in mind, especially when DOE (amended from EG&G by Kim Grice after proceedings), EPA and CDH start acting like the three stooges?

For example, on November 9, 1989, public comment was given on the 881 Hillside interim remedial actions.

On January 12, 1990, EPA's Mr. Duprey approved the commencement of EPA's cleanup crews' activities. To date, EG&G has constructed a 30-by-75 feet foundation for the 881 Detox Building. There are major failures with premature remedial action.

The responsive summary to 881 was not received for review by commentors until after cleanup began. We were not given the opportunity to determine assimilation of our comments.

The Community Relations Plan is not in effect. We strongly recommend that all remedial action halt until the public can participate in a forum to respond to cleanup actions.

Response to Comment 195

Several comments have addressed the need for further public involvement in the cleanup actions. The Parties have included additional provisions through the development activities of the CRPs to address this concern. Please see Responses to Comments 11, 12, 72, 130 through 141, 150, 153, 157, and 182.

Comment 196

There seems to have been no oversight of this first remedial action by EPA or CDH.

No soil samples and characterization and amount of respirable dust were taken at the site. We doubt that the contractor was in compliance with OSHA standards. It's questionable that sufficient monitors were in place. The excavated soil from the site was deposited at new landfill without determination of radioactivity. Workers are suspected of not wearing RAD badges. Dust levels at site during construction has not been monitored, and there may not have been a dust permit in place for this site. Where is the oversight?

Response to Comment 196

The Parties intend to make several changes in order to respond to this concern. Please see Responses to Comments 11, 12, 72, 153, 130 through 141, 150, 157, 182, and 195.

Comment 197

It states any party issuing a formal press release to the media shall advise the other parties at least 48 hours before. We recommend that the Superfund Citizens Group called the Rocky Flats Cleanup Commission be also informed 48 hours before an issuance of such press release.

Response to Comment 197

The Parties intend to initiate steps to allow for informing the RFCC regarding press releases. Please refer to Response to Comment 23.

Comment 198

In Attachment 2, Federal Facility Agreement, Statements of Work, Section 2-A, called Community Relations, it states that information shall be made readily available to the public to ensure meaningful participation. We highly recommend that the Rocky Flats Cleanup Commission receive all primary documents given to repositories.

Response to Comment 198

Please refer to Response to Comment 20.

Comment 199

Section 2, A.5, called Public Notifications states, "Public notice announcing of public meeting shall be placed in a newspaper of general circulation in the area where the meeting is to be held." We

recommend a notice of public meetings should be published in both the Rocky Mountain News and Denver Post since each serve different readers.

Most importantly, these notices should be published in the weekly local papers serving the communities adjacent to Rocky Flats like the Arvada Sentinel, which serves 19,250 readers; Westminster Sentinel, which has 20,170 readers; and Broomfield Enterprise, which has 12,850. These public notices should be published a minimum of two times in each local paper.

Response to Comment 199

The Parties agree that the announcement in these publications may be helpful. This will be included and evaluated in development of the CRP.

Comment 200

Secondly, location of all public meetings pertaining to Rocky Flats cleanup should be held within eight miles of the facility to enable affected citizens a better opportunity to attend.

Response to Comment 200

Most of the meetings which are public forums are held within close proximity to the facility. The Parties agree to develop criteria in the CRP which address this concern. The ability to totally address this concern depends on availability and features of the facilities located within an 8-mile radius of the plant.

Comment 201

Section 5, called Plan for the Prevention of Contaminant Dispersion, states, "In order to minimize the potential for windblown dispersion of dusts containing hazardous substances or other harmful materials from all sites, DOE is to submit a plan of prevention during high wind conditions of 40 miles per hour or more."

We recommend that a plan include the prevention of any visible particulate emissions from the cleanup sites at any wind speeds.

We also recommend that site-specific air monitors be mandatory. A minimum of four monitors should be placed at 90-degree quadrants and not more than 100 yards away from a site. The height should be not less than 6 feet, nor more than 15.

Response to Comment 201

Setting a criteria based solely on visible particulate detection may not be adequate. Site Implementation Plans, required by the IAG, as well as IM/IRA decision documents will have procedures to minimize contamination migration to the extent needed and practicable. Please refer to Responses to Comments 119 and 188 related to air monitors.

Comment 202

No. 12, called Discharge Limits for Radionuclides, states that DOE shall design a work plan to implement discharge limits as specified.

We recommend that the new 1990 Colorado Water Quality Standards be used temporarily until more stringent standards can be promulgated that more realistically reflect background contaminant levels found in other front range lakes and streams.

We also recommend that the Safe Drinking Water Regulations found in Section 144.15, Section 141.25, Section 141.26 be implemented. These sections prescribe that the lower level of detection used for reporting gross alpha to be three pCI per-liter and four PCI per-liter for a reporting gross beta.

The new State standards for radionuclides should not be considered as acceptable background contaminant levels for sediments in Standley Lake and Great Western Reservoir, so that these lakes need not be remediated.

Response to Comment 202

The Parties agree to address the issue of the newly promulgated Colorado Water Quality Criteria Standards within the final agreement. The standards used for analytical purposes shall meet or exceed the criteria for detection limit referenced above. Please refer to Response to Comment 96.

Comment 203

In closing, there should be zero discharge of contaminants to the environment during remediation.

Response to Comment 203

The Parties agree that this is an ultimate goal and intend to achieve it to the greatest extent practicable.

Comment 204

Interceptor canal should be built to flush Rocky Flats toxic waste down Big Dry Creek.

Response to Comment 204

Please refer to Responses to Comments 60, 126, and 169.

Comment 205

A new plant-wide environmental impact statement should be required.

Response to Comment 205

The DOE is developing an update to the 1980 EIS, separate from the IAG activities. Please refer to Response to Comment 19.

Comment 206

The citizens need to be given independent oversight authority. The Rocky Flats Cleanup Commission is mandated under the Superfund TAG program as the Citizen's representatives.

We highly recommend that the parties find a way to given citizens oversight authority.

Response to Comment 206

Specific statutory change in environmental laws would be needed to give citizens oversight authority. Please refer to Response to Comment 190. However, several activities are planned to involve the community in the regulatory agencies' oversight activities further.

COMMENTOR: Paula Elofson-Gardine, CHTCC and RFCC

Comment 207

I have basically 12 items to bring to your attention. First of all, I think all of us have been disgusted by the debacle of the 881 decision. Why should we bother to read all of these documents and provide meaningful comment if it is like throwing reams of paper down a wind tunnel and nothing ever comes back?

We must have a little legitimate response prior to the decision-making with a short lag time available for us to respond back. There is no meaningful interaction of the community as long as this is ignored.

Response to Comment 207

Please refer to Responses to Comments 22, 44, 67, and 116.

Comment 208

The Emergency Response Plan is in dire need of assistance. We insist that there be citizen representation involvement with the emergency response planning with the State Emergency Preparedness Office. We understand that the Emergency Plan will be addressed, and we would like to see that there be a representative from the TAG group involved with that so that we can be interfacing with the community.

Of course, we hope in the community there will be some notification to the public when an incident happens. Failure to address community interaction through the Technical Assistance Grant, known as the Rocky Flats Cleanup Commission is a problem.

Response to Comment 208

Please refer to Response to Comment 128.

Comment 209

Specifically, we would like to know that decisions are not made prior to the responding to public comments. And also we recognize that there has been more of a problem with the Health Department with them than with DOE and EPA, which is kind of surprising since our Colorado Department of Health is supposed to be taking care of the region and the community.

We would like to see an increase in funding for the CDH so that they can hire competent people to take care of these problems. I don't mean standard relations. I mean people we have confidence in, not hot dog salesmen, as Kim suggested.

Response to Comment 209

Please refer to Response to Comment 117.

Comment 210

We would like to make sure that the readings are available for review and note that there is a lack of inappropriate risk analysis taken into consideration with the ARARs and synergistic effects of all contaminants, whether they be radiotoxic or hazardous waste. The ARARs are not realistic. We would like to see that the citizens are taken into consideration.

Response to Comment 210

Please refer to Responses to Comments 18 and 120.

Comment 211

Also, we understand that they are using FIDLERS for spot-checking for readings, and we would like those also to be available to the public for review.

Response to Comment 211

Please refer to Responses to Comments 11, 12, 72, 130 through 141, 150, 157, 182, 195, and 196.

Comment 212

Part 49 of this agreement, Force Majeure, Page 91, I find that to be particularly disturbing that the list any event arising from factors beyond the control of the facility and under the agreement, including, but not limited to, Acts of God, fire, war, insurrections, civil disturbance, explosion, unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonable diligent maintenance.

Here's where I stop. Reasonable diligent maintenance. This is an oxymoron in this case. With over 200,000 deferred-work-maintenance hours at the facility with this humpty-dumpty falling apart, I find that to be an insult to this agreement, that they're given this easy out because this facility is literally falling apart at the seams.

I don't think that they should be given this easy out because everything is falling apart there. That means that the next time they have a big blow like the '57 fire, "Gee that wasn't our fault." "Sorry about that." "We won't be held responsible." BS. I would like to see that deleted.

Response to Comment 212

Please refer to Response to Comment 122.

Comment 213

And contamination from various operating units is not necessarily confined to that particular OU. Resuspension and migration of radiation and hazardous materials must be controlled throughout remediation from start of construction of any necessary facilities to completion of the entire operation.

Response to Comment 213

Please refer to Comment 123.

Comment 214

Time lines given for various OU plans are very ambitious. Many time limits will not be met, and already there are some that are in violation of limits that they have not been able to meet. Not only that, but the Kill a Tree Program with voluminous documents all the way down the next few years will put some strain on the ability of many people to respond meaningfully to this.

Many of us on the Cleanup Commission have a tremendous ability to digest materials and spit it back, if you will, but even for us, that could be a pretty ambitious task. I am very concerned about the meeting that we had in which EG&G came and spoke with us. There was an undercurrent of, "Well, we have a problem." "Too bad, we have to push on." I don't believe that that is a reasonable expectation. We don't want quantity over quality. We want the public to be protected. If there is a problem, we want it taken care of, even if it means pushing back time lines.

This has got to be done with quality and care, with every protection possible.

Response to Comment 214

Please refer to Response to Comment 124.

Clarification Question from EPA

I don't want to lead you anywhere, but would it be fair for someone like myself observing your comments to say you're more interested in quality production of the cleanup effort, public involvement, rather than pushing the cleanup schedules as opposed to other comments we hear tonight, specifically from the City of Westminster, that says they want the scheduled compressed and expedited?

Comment 215

Yes. I think as long as we have -- if we are really going to make an effort to clean this up, it needs to be done right. It is not just a public relations thing. It needs to be done right.

Just because we have had the FBI out there and everybody going, Oh my God, it is a mess, it has been there for 35 years. Who are we kidding? Just because there is political pressure right now to hurry, hurry, hurry, doesn't mean that we lose our senses. Let's do it right. Quit playing games.

Response to Comment 215

The Parties concur. As noted in Response to Comment 13 above, the Parties agree to evaluate the schedules.

Comment 216

It is important that the public not be led into a false sense of security or confusion in regards to off-site contamination. The damage has been done.

With all the various reports from the Rocky Flats facility, it is very clear we have a significant off-site contamination problem that will have to be addressed. And let's not let the people in Westminster and Broomfield feel that they are safe if they have an interceptor ditch.

This stuff has already gotten into the sediments of the lake and tributaries around there. Let's not take everybody for the local stooge here because it is out there, and it is not normal to have to have plutonium in your drinking water and whether or not they discharge around the lake at this point is irrelevant. It is already in the lake.

So let's be real about that and not be given a false sense that if everything goes around the lake, that everything is okay. It is still there. It is clear that remediation activities in the past have caused migration of contaminants.

Response to Comment 216

Please refer to Responses to Comments 60, 126, 169, and 204.

Comment 217

And I cite the 903 pad barrel removed remediation with the readings going sky high. We want to make sure that there's enough protection for the public in terms of doming the site, using temporary structures around there so that there can be more definitive protection, that not only assures the public that there is containment that contains re-suspensions and contaminants that everybody would be a lot more comfortable with. I don't think anybody is comfortable with them ramrodding with the back-hoe out there.

Response to Comment 217

Please refer to Response to Comment 127.

Comment 218

In the final analysis, is all this an exercise in futility? As long as the Rocky Flats Nuclear Weapons Facility continues to operate, it continues to generate waste and discharge hazardous and radioactive emissions into our air, water, and soil. The only way to have real cleanup is to close this nuclear dump.

Response to Comment 218

Please refer to Response to Comment 128.

COMMENTOR: Joe Tempel, RFCC

Comment 219

I would like to applaud the three agencies for coming together to describe your life in the next 10 years and ours, too.

And I would like to dispel the myth that the citizens are here just to hold things up. I think the citizens are here to assure a quality job, and I think we can have quality and speed at the same time.

So I don't think we should confuse the citizen involvement with slowing the process up. And I think until we do learn quality control measures and what a quality report is and what a quality cleanup is, it will appear that things are being slowed down. But because we live here, I think we demand that quality to protect our health and safety. If this were just a messy gas station with a leaky gas tank, we might get by with a few less concerns about how we go about cleaning it up, but we are dealing with radio nuclei, and that instills fears in the hearts of a lot of people around the Denver Metro area.

So I recognize that you may have to go overboard in your actions and cleanup and do things that maybe aren't necessarily needed, but I think to regain the trust of the public, you may have to go overboard in some of those things to instill a certain amount of trust in the public.

Response to Comment 219

The Parties appreciate the viewpoints of the commentor and recognize the merit of the observations in the comment.

Comment 220

I am surprised that EG&G are not a signatory to the agreements since they will be held responsible for carrying out the agreement. If they can be held liable, I would like to see their name on the agreement.

Response to Comment 220

Please refer to Response to Comment 10.

Comment 221

And speaking in terms of the quality control, I think we had a little bit of a test drive with the 881 remedial action, and I'm not going to repeat what went on before, but I think we had enough sense of problems that appeared there, that we learn from it, and let's move on and do it better next time.

Response to Comment 221

The Parties concur. Please refer to Responses to Comments 22, 44, 67, 116, and 207.

Comment 222

But I want to mention a few things that weren't mentioned already this evening, and in our public hearing comments on 881 we asked for a copy of the Health and Safety Plan to be submitted to us; and to my knowledge, this still hasn't been produced, or we haven't received it, nor have the agencies that should have seen it.

This includes the job safety analysis, a work permit, and an excavation permit. These are things that should have addressed a lot of our concerns with dust control, and these have not been reviewed by the Rocky Flats Cleanup Commission yet. And to my knowledge, none of these documents have been reviewed by the agencies that should have seen these documents.

At a minimum, before construction begins, Notice of Construction should be sent to EPA to help the department and the public, something to let them know when the cleanup is going to happen so that these agencies can appear on-site to begin their monitoring.

As I understand -- well, I know we weren't notified until we read it in the newspaper. We've already mentioned the decision documents, Responsiveness Summary that we hadn't received before the cleanup began.

Response to Comment 222

The Parties agree this is an important concern. The documents referred to in the comment above have been made available for EPA and CDH review. Please refer to Responses to Comments 22, 44, 67, 116, 207, and 221.

Comment 223

I should also mention, and you're well aware of this, that the IAG is already out of date with the operable unit two, and the interim remedial action for 903 has not been put back in the schedule. It's not been met there. So at a minimum, that should be revised.

Response to Comment 223

The Parties shall revise the schedules to reflect the latest proposed timeframe for actions at OU2.

Comment 224

I recognize that during the next year, over half of the documents that will be produced at the plant with regard to the cleanup will consist of the work plan. At least the Rocky Flats Cleanup Commission would like to review these work plans with other agencies.

We don't want to hold up the process, but we do feel this is an important point for our input because the next time we see a document would be a year later, and if we want certain tests to be performed during that year, we would like to have an opportunity to review these plans, not slow up your process.

Response to Comment 224

Please refer to Responses to Comments 21, 35, 36, 42, 57, 62, 88, 153, and 173.

Comment 225

Let me mention another thing that I'm sure you're concerned with, but something that will be very obvious soon. I've just been in this business for a year. I know how much information is out there. But when we start a cleanup, there has to be some way of logging what is going on at the site.

With our experiences with 881, we are not fully convinced that the contractors are logging when they are taking tests, when they wet the site; they need to document everything they do on the site, and all of this information should be computerized and accessible to the public, but mainly the agencies who are responsible.

Maybe this is going overboard, but again, I think this has to be. In order to regain the trust of the public, you have to document that you are doing the right thing out there. We don't have that feeling this time.

Response to Comment 225

The Parties will develop specific procedures for documenting this. Please refer to Responses to Comments 11, 12, 72, 153, 130 through 141, 150, 157, 182, 195, and 196.

Comment 226

I'm also concerned that the agencies don't have enough appropriate upper management people to review all of these documents; and I count that with about 30 here in the next year, we can kind of stumble along and do our best.

We've asked for more money, but we at least feel that the agencies should be funded at an adequate level and be able to hire staff at an upper-level management level, not just an entry-level. We deserve someone who can step in running, and not have to stumble along a year or two. Nat can tell them everything he knows about Rocky Flats.

Response to Comment 226

Please refer to Responses to Comments 2 and 148.

Comment 227

As far as the Community Response Plan, we feel that this plan needs to be accelerated. I mentioned at the workshop that we need an interim Community Response Plan, just to have something in place until you have completed all of your surveys, interviews, and done a complete analysis and developed a complete plan of what that should consist of.

In the interim, I think we would be happy to work with you on developing that interim plan so that we have something in place between now and a year from now when that plan would be completed.

Response to Comment 227

Please see Response to Comment 20. Several other responses also address the need for an interim Community Relations Plan, which will be developed by the Parties, with community input.

Comment 228

I would like to applaud Barb's comments on the need for a citizen dispute resolution process since that is the major part of this cleanup, to involve the citizens. We don't want to sue, we don't have money to sue, EG&G can't sue. We think that there could be a process developed to resolve those conflicts outside of the Court.

Response to Comment 228

Please refer to Responses to Comments 7, 8, 38, 114, 143, and 153.

Comment 229

And finally, I would like to compare with Melinda's comments about moving up the off-site analysis, not leaving it until the very end. Again, this is one of the fears in the community that there is pollution off-site.

I'm aware that the Health Department is doing soil tests around the Metro area. This analysis should be completed in a hurry and fears dispelled so that we can deal with the facts, and not fiction.

Response to Comment 229

Please refer to Responses to Comments 12, 34, 45, 50, 52, 54, 55, 59, 61, 68, 69, 70, 71, 77, 78, 79, and 142.

COMMENTOR: Eugene DeMayo, SC and RFCC

Comment 230

This IAG definitely is a needed document. Of course, I will find a few things to say that indicate that it could be improved. But I'm happy to see that something has come out that we can work with, and I don't feel like just throwing it away and starting over.

Response to Comment 230

The Parties appreciate the positive input.

Comment 231

Specifically, in Chapter 1, Part 5, No. 20, there is a portion of the page there that indicates that any action completed under this agreement will be the final action at an operable unit and that any site not addressed by this agreement cannot be claimed in the future to need any cleanup.

Given the lack of comprehensive knowledge about these sites, it seems more likely than not that new information could be required in order to protect the public and the environment or reassessment at any of the sites, even well beyond the completion of the agreement.

This section I think should be improved in order to allow a reevaluation taking place if new information requires that.

Response to Comment 231

Please refer to Response to Comment 105.

Comment 232

On Section 3.13.105, page 33, it says that, "In the event ... the U.S. Supreme Court rules that RCRA Section 6001, waives the federal government's sovereign immunity from State-imposed fines and penalties

This section is a little bit inappropriate in that it requires that the Supreme Court rule on this particular issue on sovereign immunity and that lower Court rulings would have no effect on this agreement. It seems a little presumptuous that the agencies involved here could overrule the Court. I suggest that this section be reworded to allow renegotiation of this agreement even if the U.S. District Court or Circuit Court finds that sovereign immunity is waived by RCRA.

Response to Comment 232

Please refer to Response to Comment 106.

Comment 233

Section 2.18.121, page 40, discusses that DOE will not need a RCRA or CHWA permit for any portions of remedial/corrective action which are conducted entirely on-site. It is not clear what is

meant by entirely on-site. This should be clarified and should specify that no emissions, via any route, water, air, blowing soil, will leave the site in order that they will not require a permit.

Response to Comment 233

Please refer to Response to Comment 107.

Comment 234

Section 5.30.185, page 68, is a good section. I would hope that would be left intact in the final agreement.

In the section allowing EPA to get out of this agreement if they can't agree with DOE on what kind of money should be given to them, basically, if an agreement can't be enforced, there's money to provide the personnel to enforce it.

Response to Comment 234

Please refer to Response to Comment 108.

Comment 235

On page 86, Section 5.44.231, a copy of the administrative records should also be kept in the Front Range College library along with the other documents concerning Rocky Flats that are kept there.

Administrative records, in the current draft only, are required to be kept in the Rocky Flats Reading Room. I prefer not to go there, and at the Monitoring Counsel's office in Golden, which is where the rest of the documents are being kept for the public.

Response to Comment 235

Please refer to Response to Comment 109.

Comment 236

In the Attachment 2, II-A, page 14, community outreach and/or community interviews should specifically be required to include community groups that focus on Rocky Flats issues. The community's most interested and knowledgeable citizens are likely to be members of these groups.

Obviously, three, four, or five of those groups are represented here; and, if you interview people at random around town, I think you'll find a lot of them are fairly uninformed about the issues involved with Rocky Flats, although it may be a bit biased to check with groups who are informed. Certainly it would have a better reflection of what the public feels about the issues surrounding Rocky Flats.

Response to Comment 236

Please refer to Response to Comment 110.

Comment 237

On page 16, it doesn't specify, and probably should, that public information meetings should be required to be held on weekday, evening hours. There are plenty of meetings that go on in the middle of the day, but some of us who are volunteers cannot give up our livelihood to get involved.

Response to Comment 237

Please refer to Response to Comment 111.

Comment 238

Page 17 of Attachment 2 discusses a copy of the meeting record. This should not require a written request. A phone call request to the DOE Community Relations contact should specifically be considered adequate.

I don't know about you guys, but sitting down and writing a letter for a document takes as much time as reading it, or you end up with requests on Post-it notes.

Response to Comment 238

Please refer to Response to Comment 112.

6.0 LIST OF CORRECTIONS AND CHANGES TO ROCKY FLATS PROPOSED IAG

I. CHANGES TO DRAFT IAG; MAIN BODY LANGUAGE

Paragraph 3 - Revised to note 19 states are HSWA authorized. {change}
Changed date of citation from 1982 to 1989. {correction}

Paragraph 4 - Clarified that portions of the agreement are part of a State administrative order. {correction}

Paragraph 8 - Changed date of citation from 1982 to 1989. {correction}

Paragraph 9 - Revised reference to the NCP. {correction}

Paragraph 15 - Added J., a paragraph to address further community involvement on remedial decisions and plans. Noted that IM/IRAs are to be consistent with paragraph 150. {change}

Paragraph 20 - Clarified language to address concerns that further action may need to be taken at individual sites of OUs. {clarification}

Paragraph 25 - Inserted the terms "Inter-Agency Agreement" and "IAG" into the definition of "agreement." {clarification}

Paragraph 32 - Deleted reference to EPA as selector of remedy under RCRA. {correction}

Paragraph 52 - Inserted the phrase "and successor agencies" in the event EPA is succeeded by a new agency. {clarification}

Paragraphs 56 and 61 - Modified to reflect that EG&G is the present management and operating contractor. {correction}

Paragraph 67 - The number of identified individual hazardous substance sites is 178. {change}

Paragraph 86 - Substituted EG&G for Rockwell. {correction}

Paragraph 89 - Deleted phrase: "for OUs for which the State is Lead Regulatory Agency." This makes the paragraph consistent with the subject matter and intent of the chapter. {correction}

Paragraphs 94 and 111 - Changed the designation of DOE representative to the Dispute Resolution Committee from Assistant Manager for Operations to Assistant Manager for Environmental Management. {correction}

Paragraph 103 - Clarified that portions of the IAG are enforceable as an order through citizen suits. {clarification}

Paragraph 106 - Deleted phrase: "for those OUs for which EPA is the Lead Regulatory Agency." This makes the paragraph consistent with the subject matter and intent of the chapter. {correction}

Paragraph 141 - Corrected to reflect 16 OUs, instead of 10. {correction}

Paragraph 147 - Clarified that in the event of a dispute between EPA and the State, EPA retains decision making authority for CERCLA determinations, the State retains decision making authority for CHWA determinations. {clarification}

Paragraph 150 - Clarified roles in establishing and developing Interim Measures (IMs)/Interim Remedial Actions (IRAs). {clarification}

Paragraph 154 - Clarified Comprehensive Risk Assessment requirement to make it consistent with draft Statement of Work (SOW). {clarification}

Paragraph 155 - Replaced EPA/State "approval" with "comment" of draft Proposed Plan. Corrected reference to State permit modification regulations. {correction}

Paragraphs 155 to 158 - Clarified and distinguished draft Proposed Plan, from final Proposed Plan and from Final Plan. Also, make this consistent with SOW. {correction}

Paragraph 168 - Deleted references to paragraphs 157 and 158 since those paragraphs do not describe resolution of EPA disputes. {correction}

Paragraph 182 - Revised for FY91 and FY92. {correction}

Paragraph 184 - Revised dates. Deleted reference to specific fiscal year. {clarification}

Paragraph 229 - Added language to reflect further community involvement in developing the Community Relations Plan (CRP) and language which assures consistency with the National Contingency Plan (NCP), EPA guidance, and the SOW. Also, added language that community involvement activities shall be conducted by DOE in consultation with EPA and the State. {change}

Paragraph 230 - Added language addressing emergencies and the need for the public to receive information immediately. {change}

Paragraphs 231 through 232 - Made changes on location of Administrative Record and added language which indicates documents shall be available at times other than business hours, as developed in the CRP. {change}

Paragraph 240 - Clarified that liability extends to other potentially liable parties, not just DOE contractors. {clarification}

Paragraph 242 - Clarified that DOE does not waive any rights it may have to defend against enforcement actions. {clarification}

Paragraphs 260 and 261 - Revised to reflect that the draft IAG has undergone public comment and has been revised. {change}

II. CHANGES TO DRAFT STATEMENT OF WORK (SOW)

ATTACHMENT 2 - STATEMENT OF WORK (SOW)

General - Language in the SOW which refers to milestone submittal dates has been changed to be consistent with new schedules in Table 6, adjusted for reprioritization. Revise numbering of OUs to reflect reprioritization and reorganization. {correction}

Section I.B.9. - Assured language and references are consistent with paragraphs 155 and 156 of the IAG regarding Proposed Plans and Remedy Selection Documentation. Required draft Proposed Plan to be submitted simultaneously with final CMS/FS. {correction}

Section I.B.10. - Changed this section to be consistent with language in paragraph 150 of the IAG. Also, added language which provides for EPA/State review and approval of IM/IRA Responsiveness Summaries and decision documents. To assure consistency with Part 34 of the IAG, this section has been revised to include specific language on what status of work reports shall include. Added language requiring DOE to coordinate emergency removal actions with EPA and the State. Changed section language to require IM/IRAs to be consistent with NCP. {change}

Section I.B.11.a. - This section was clarified in order to present the administrative and investigative process required to provide the information necessary for decisions on inside-the-building interim status units. {clarification}

Section I.B.11.b. - This section was clarified so as to provide the administrative process for interim status units external to buildings and was clarified so that the IM/IRA process is conducted in accordance with paragraph 150 of this agreement. This section was clarified to provide EPA and State review and approval of the Final IM/IRA Decision Document and Responsiveness Summary. {clarification}

Section II. - Language was added to reflect enhanced community involvement in development and implementation of the Community Relations Plan (CRP). Specific reference is now made to dispute resolution, RFI/RI work plans, extensions, and schedule changes. Also, language regarding updates to the CRP was included. {change}

Section II.A. - This section now includes language specifying consultation with EPA and the State and response to public comment in development of the CRP. This section now requires that activities to be conducted under the CRP be consistent with national and regional guidance and policy. {change}

Section II.A.1. - This section was changed to reflect the new locations for public information repositories and that all documents listed in Table 4 shall be made available for public review at those repositories. {change}

Section II.A.2. - Minor corrections in mailing lists procedures have been made in the language. {corrections}

Section II.A.3. - Changes in the news release procedures to address emergencies, the public's need to receive information immediately, and development of the CRP have been made. {change}

Section II.A.5 - Changes have been made to accommodate convenient times and locations of meetings. {change}

Section II.A.6 - Clarified that the Final Proposed Plan will be made available for public comment. This section shall also be modified to require public notification in publications of general circulation as determined in the CRP. {clarification}

Section III. - This section has been modified to require DOE to distribute all Health and Safety Plans and other pertinent documentation defining work procedures and safety precautions to be taken during environmental investigations or response actions to all contractors or subcontractors involved in investigations or response actions. {change}

Section IV.A. - This section was changed to reflect incorporation of amended QAPP guidance and OSWER Directive 9355.0-14. {change}

Section V. - Changed windspeed criteria to be addressed within Plan for Prevention of Contaminant Dispersion.

Section VII. This section was clarified so as to reflect the general requirements of Section I.B.9. {clarification}

Section IX.B. - This section was clarified to require submittal of referenced memoranda prior to submittal of the draft CMS/FS. The draft CMS/FS shall be submitted for EPA and State review and comment. Final CMS/FS reports shall be submitted to EPA and the State for review and approval. {change}

Section X. - Submittal of updated Background Study has been included. This section was clarified to indicate State and EPA review and approval of the Background Study Plan and subsequent modification of the plan as necessary. {correction}

Section XII. - The Work Plan for Discharge Limits for Radionuclides standards now reflects the newly adopted Colorado Standards for Walnut and Woman Creeks. Language within the section was modified through renegotiation to reflect the Parties' current disagreement regarding the enforceability of these standards and to reserve each Party's rights with respect to the enforceability of these standards. {change}

Section XIII. - This section has been changed to incorporate new language to address public comment through the IAG and the State's CHWA Corrective Action Permit for several of the cleanup decision documents. This section now clarifies who is responsible for submittal of CAD/RODs and proposed plans and clarifies the administrative process. {correction}

Section XIV. - This section has been corrected to be consistent with Section XIII. with regard to a reference in XIII. to implementation of CAD/ROD activities. Language addressing when DOE implements the CAD/ROD, upon final modification of the State permit has been added. {correction}

Section XIV.2. - This section has been changed to require submittal of CD/RD Work Plans. {change}

Section XIV.3. - This section has been changed to require the CD/RD plans to be submitted in accordance with the schedules within the CD/RD Work Plans. The CD/RD plans now contain CA/RA schedules. {change}

Section X.V.1. and X.V.2. - Revised units to show changes to units 49, 63, 76, and 77. Revised submittal requirement to as required by the State. {correction}

Table 1 - Eliminated SWMU 198 from investigation as this is not a specific site and is addressed through investigation of the other sites.

Table 2 - Incorporated changes on IHSS and OU renumbering and prioritization. Included east spray fields within OU2 (IHSS 216.2, 216.3). {change}

Table 3 - Incorporated changes on OUs. {change}

Table 5 - Incorporated East Spray Field changes. {change} Revised Site 215 within old OU3 to exclude Tanks T-66, T-67, and T-68, which are in IHSS 124. {correction}

Table 6 - Reprioritized all OUs to reflect public comment concerns, and adjusted schedules to reflect new milestones in IAG.

Reprioritized all OUs.

- OU1 881 Area
- OU2 903, East Trench, Mound Areas, East Spray Fields
- OU3 Off-site Areas
- OU4 Solar Ponds
- OU5 Woman Creek Drainage
- OU6 Walnut Creek Drainage
- OU7 Present Landfill
- OU8 700 Area Sites
- OU9 Original Process Waste Lines
- OU10 Other Outside Closures
- OU11 West Spray Field
- OU12 400/800 Areas Sites
- OU13 100 Area Sites
- OU14 Radioactive Sites
- OU15 Inside Building Closures
- OU16 Low Priority Sites (no further action verification)

{change}

The draft Background Study Report for water and soils were both submitted on 12/15/89.
{correction}

Included EPA/CDH final approval of Community Survey Plan. {change}

Included Public Comment period and EPA/CDH approval of Responsiveness Summary for Discharge Limits for Radionuclides Work Plan. {change}

General - Added time to milestones for EPA/State review and approval of Responsiveness Summary for all IM/IRA decision documents and others listed in Section II.A.6. {change}

The submittal date for the Final Phase II RFI/RI Work Plan for OU2 (alluvial) was changed to 4/12/90. IM/IRA dates shall be changed to reflect renegotiated milestones.
{change}

Included inside-the-building closures. These units include sites 178, 179, 180, 204, 211, 212, 215, and 217. Site 203 has been included with the Present Landfill. Sites 124.1, 124.2, 124.3, and 170 have been included in Other Outside Closures, Operable Unit 10.
{change}

Made changes to milestones indicated by reprioritization and public review of Responsiveness Summary 10 days prior to initiation of field remedial/corrective activities work, and development of briefings for public on major work activities, due to public comment. {change}

APPENDIX

**ROCKY FLATS ENVIRONMENTAL MONITORING COUNCIL
FIRST POLICY REPORT, FEBRUARY 1990**

Rocky Flats Environmental Monitoring Council

An Advisory Committee to Governor Roy Romer and Congressman David Skaggs

February 12, 1990

The Honorable Roy Romer
Governor of Colorado
State Capitol
Denver, CO 80203

The Honorable David Skaggs
U. S. Representative
9101 Harlan, Suite 130
Westminster, CO 80030

Dear Governor Romer and Congressman Skaggs:

I am enclosing for your consideration a Rocky Flats Environmental Monitoring Council report making a series of 52 recommendations regarding the Rocky Flats Nuclear Weapons Plant. We believe that implementation of these recommendations would help to: (1) improve communication and public involvement; (2) make environmental restoration and waste management programs more effective; and (3) help reduce potential adverse environmental, safety and public health impacts of Plant operations.

As you know, the Council is not a highly technical body. Most of the recommendations are based on common sense observations or reflections of public concerns. Open, credible information sharing about Rocky Flats is one of the most recurrent themes. Many of the recommendations may appear to be for actions or goals that have already been espoused. We believe, however, that firm commitments must be made and the responsible agencies held to those commitments. Collectively they should make a major difference in public perception and in actual operation. The cost and time requirements for implementing these recommendations are minor compared to total Rocky Flats Plant operations.

The recommendations are made in terms of the agencies which would be responsible for actual implementation. We would be happy to work with you or your staffs in terms of identifying ways for you to seek implementation of any of the various recommendations you choose to support. We also would be happy to provide more detailed information about any of the recommendations or the rationale behind them.

As you know we have been holding regular public meetings, publishing a widely praised newsletter and operating a comprehensive library. We believe that we have provided understandable information about highly complex and technical as well as contentious issues and have served as an effective moderator for extremely volatile issues. We are thus confident that we are responding well to our charter directives to improve communication and monitor health, safety and environmental issues. This report, however, is our first major effort in response to our charter directives to provide policy recommendations. We would appreciate your thoughts as to the value of these recommendations and any direction you might provide as to particular issue areas we should pursue in developing future recommendations.

Sincerely,


Samuel Williams
Chairman

**Rocky Flats Environmental Monitoring Council
First Policy Report to Governor Roy Romer
and Congressman David Skaggs**

The Rocky Flats Environmental Monitoring Council is a citizen advisory committee appointed by Governor Roy Romer and Congressman David Skaggs in January 1988. The purpose of the Council is to:

- promote effective communication between the Rocky Flats Plant, concerned public agencies and the public;
- monitor environmental, safety and public health aspects of Rocky Flats operations and cleanup programs;
- and to make recommendations to further public objectives in these regards.

The Council has been seeking to fulfill the first two purposes by means of monthly or bimonthly public meetings, a bimonthly newsletter and general oversight of Rocky Flats issues. The Council has established and utilized four committees: Cleanup, Health, Operations and Monitoring. The Council and its committees have received extensive information from public documents and from briefings by Rocky Flats Plant personnel, regulatory agency personnel, outside experts and others. Many of the issues and problems regarding Rocky Flats are highly technical and involve intricate legal regulations or involve classified information.

Nonetheless the Council has developed many ideas to increase public responsibility of Rocky Flats operations. This report recommends policy changes toward that end in accordance with the Council's charter. It is based upon committee meeting and full Council work session discussions during September through November 1989 and is based upon full consensus of the Council.

The recommendations are organized into six general topics: *Information and Public Involvement; Administration; Environmental Restoration and Waste Management; Health; Operations; and Monitoring*, with the last four topics reflecting the Council's committee structure. Several common needs regarding Rocky Flats underlie nearly all of the recommendations:

- (1) Communication with the public about issues and problems must be full and open.
- (2) There must be opportunity for meaningful public involvement in decisions.
- (3) Information dissemination, regulation and oversight must be credible.
- (4) Full financial and other commitment must be made to meeting health, safety and environmental goals, regardless of production needs or other factors.

The Council believes that if these general themes are pursued and the recommendations that follow are implemented, the potential for adverse health, safety and environmental impacts by Rocky Flats can be substantially reduced.

Information and Public Involvement

One of the primary missions given to the Council is to improve communication among the Rocky Flats Plant, concerned public agencies and the general public. The Council has confirmed that improved communication is critically needed. DOE and its contractors have historically demonstrated a reluctance to share information about the general operation of Rocky Flats, about incidents and problems that have occurred and about anticipated future problems. This lack of openness has aggravated public mistrust of the Plant and its possible impacts upon the environment and public health and safety.

This air of secrecy may also interfere with wise decision making regarding Rocky Flats operations. Improved public awareness of Plant operations and problems should result in better addressing community concerns and in better public acceptance of decisions made. Open, public decision making encourages more timely and thorough consideration of decisions and alternatives. The Council recognizes that the Plant's weapons mission may justify certain security concerns; however, far more about Rocky Flats could and should be discussed openly. The intention of the following recommendations is to achieve improved public information, public and regulatory agency access and public involvement.

1) DOE should publish public information papers addressing all plant operation, waste management, environmental restoration and other situations with important health, safety or environmental considerations. These public information papers should clearly and concisely identify issues and alternatives for the regulatory agencies and the public in a timely manner. Quarterly reports updating each of the "open" files also should indicate the current status of negotiations with regulatory agencies regarding these situations. DOE would initiate new issue files as soon as warranted or as requested by the Governor. DOE should address the following specific issues initially.

- TRU waste storage and disposal
- Low level mixed waste storage and disposal
- Liquid mixed waste treatment (TRU and low level contaminated solvents and oils)
- Building 371 upgrading
- Wastewater and runoff discharges
- Offsite contamination areas
- Use of Carbon Tetrachloride, other solvents

2) DOE and/or the regulatory agencies should prepare "question and answer sheets" addressing likely citizen questions for issues such as the above, for major cleanup activities, for waste management programs, for regulatory programs and for other issues of public concern. DOE and/or the regulatory agencies also should prepare information sheets on the potential health impacts of the various chemicals used at Rocky Flats or alleged to have been released into the environment.

3) In developing cleanup strategies and priorities, budget requests, long range plans, and other major decision making documents, DOE, EPA and CDH should provide opportunity for public input early enough in the process to be considered in a meaningful fashion.

4) DOE should make preliminary information on unplanned events available to CDH, EPA, the Governor, the Colorado and United States representatives for areas around Rocky Flats and the Council and also to the general public in their public reading room within 24 hours regardless of eventual official reporting requirements.

5) DOE should establish an electronic bulletin board to provide computer access to these unplanned event reports, to other incident reports, to the public information papers called for in recommendation number one, to a calendar of meetings, hearings and due dates and to other appropriate information. DOE should also establish a voice activated information system to provide telephone access to appropriate summary information.

6) DOE should conduct a review of their document security classification system with two purposes in mind. One would be to explain that system and its necessity to the public. The other would be to identify possible means for reducing the amount of information for which access needs to be restricted. In the meantime, DOE should minimize use of classified or UCN status for documents which would be of interest to the public.

7) EPA and CDH should have unrestricted access to all plant operations. EPA and CDH should require compliance, permit writing or other positions requiring access to security areas or classified information to apply for Q clearance as a condition of employment. DOE should expedite all CDH and EPA applications and accommodate those staff without Q clearance needing access by escorting them where needed.

Administration

In seeking to improve communication regarding Rocky Flats and to monitor environmental impacts of the Plant, the Council has been impressed by the lack of credibility which DOE and Rocky Flats have with the community and outside agencies. This lack of credibility is partially attributable to the air of secrecy discussed above in the information and public involvement section. But, the Plant's low credibility also derives from the manner in which Rocky Flats operations are overseen generally and environmental, health and safety regulations in particular are enforced. The DOE weapons complex is unique in that, DOE itself, rather than an outside agency has authority over worker health and safety protection, monitoring and research of worker and community health impacts, nuclear safety and some environmental monitoring. Only in recent years have outside agencies been begrudgingly allowed to regulate handling of hazardous wastes produced. Because of inherent conflicts between safety and production goals, the public is suspicious of DOE's self-policing abilities and the credibility of studies and oversight activities undertaken by DOE or its contractor. The intention of the following recommendations is: that various oversight responsibilities be placed outside DOE; that environmental, health and safety needs be fully funded regardless of production needs; and that regulatory agencies and Rocky Flats workers themselves be strengthened in their ability to achieve environmental, health and safety protection.

8) The U.S. Congress should enact legislation designating the Occupational Safety and Health Administration (OSHA) or other agency(s) other than DOE to oversee and enforce laws and regulations for worker health and safety at Rocky Flats and other DOE weapons facilities.

9) The U.S. Congress should enact legislation designating the Environmental Protection Agency (EPA), its state delegates or other agency(s) other than DOE to oversee and enforce non-hazardous radioactive waste management at Rocky Flats and other DOE weapons facilities. Congress should also place outside DOE authority for oversight and enforcement of other environmental laws and regulations not already placed elsewhere.

10) The U.S. Congress should enact legislation requiring DOE to contract out to the Department of Health and Human Services (HHS) or others for epidemiological and radiation studies. An independent panel including DOE, HHS and outside members should direct DOE as to studies needed.

11) The Colorado General Assembly should not enact legislation to establish a hazardous waste commission composed of lay persons who would rule on: a) modifying standards or requirements now applicable to the Rocky Flats Plant's handling, treatment, storage or disposal of mixed hazardous waste, b) compliance strategies for Rocky Flats or c) any other aspect of Plant operations for which such a part-time commission would be called on to digest large volumes of detailed and highly technical information.

12) The U.S. Congress should enact legislation stipulating an award fee structure for the contractor at Rocky Flats such that more than 50 percent of award fees are based upon achieving compliance activity, environmental restoration and waste management goals.

13) The federal government and the State of Colorado should ensure adequate funding for effective regulatory agency oversight, enforcement and monitoring at Rocky Flats.

14) DOE and EG&G should adopt training programs and take such other measures as are necessary to change the atmosphere of complacency, lack of inquisitiveness and discouragement of problem identification with regard to safety indicated by the Criticality Panel report. In particular, DOE and EG&G should substantially increase the involvement of production workers in health, safety and environment improvement efforts.

15) EG&G should adopt training programs and other measures in order to improve and maintain employee morale. Both EG&G and DOE should adopt aggressive programs for recruitment and training so as to have the best workforce possible. DOE should specifically earmark funding for worker training on health, safety and the environment.

Environmental Restoration and Waste Management

A primary focus of the Council's mission is to monitor environmental restoration and waste management efforts at Rocky Flats. These issues and the complex laws and programs that address them have dominated the attention of the Council as well as its Cleanup Committee. Many of the recommendations listed under Information and Public Involvement and Administration headings derive from consideration of these issue areas. The Rocky Flats Plant, the State of Colorado and other parties seem to be agreed on general objectives which the Council fully supports: the Rocky Flats plant site should not be used for permanent disposal of hazardous waste and all past waste disposal and other contamination areas should be restored to allow unrestricted future use of the plant site. The intention of the recommendations that follow is that certain cleanup goals be made formally, that environmental restoration and waste management receive the necessary resources to proceed expeditiously and effectively and that the public be allowed opportunity to be meaningfully involved.

16) DOE, CDH and EPA should specifically stipulate in an interagency agreement that there is to be no new disposal of hazardous, mixed hazardous or radioactive waste at Rocky Flats and that past waste disposal areas are to be restored to allow unrestricted future use.

17) DOE should treat, store Rocky Flats hazardous and mixed wastes only in full compliance with Resource Conservation and Recovery Act (RCRA) and other applicable regulations.

18) In setting environmental restoration and waste management priorities, DOE and the regulatory agencies should put a premium on cleanup of offsite contamination and on eliminating or at least minimizing offsite discharges and emissions of hazardous or radioactive materials.

19) DOE should design and the regulatory agencies should approve only those plans for cleanup of past contamination and decommissioning of units that: (a) reduce or eliminate risk to present and future generations from plant operations and emissions and discharges, (b) avoid increased risk to workers or public as a result of the actual cleanup process, (c) achieve unrestricted future use of the land, and (d) accomplish the task in a cost-effective manner.

20) DOE should not undertake or allow activities within the Rocky Flats Plant buffer zone that could result in increased public exposure to hazardous discharges or emissions from the Plant. Any entity undertaking new construction outside the buffer zone, but within 5 kilometers of the buffer zone boundary, should be required to post notice alerting all potentially affected parties of the potential hazards.

21) The U.S. Congress should fully fund corrective activities, environmental restoration and waste management at Rocky Flats. In order to clarify funding commitments, DOE should utilize line item budgeting for corrective activities, environmental restoration, and waste management operations.

22) Congress should increase the budget for the EPA technical assistance grant program to allow citizen groups to evaluate and respond to all environmental contamination studies and cleanup proposals at multiple unit Superfund sites such as Rocky Flats.

23) The Rocky Flats Plant should make available for the public clear, concise, self-contained descriptions of the activities and their priorities and scheduled completion dates included in its 1990 Five Year Plan for: a) environmental restoration, b) new initiatives for waste management and c) corrective activities for complying with existing legal requirements.

24) In certain situations EPA and CDH issue notices of civil violation to Rocky Flats prior to negotiating consent agreements with the DOE or the Plant contractor in regard to those violations. In those situations, EPA and CDH should seek out public input as to appropriate corrective measures after issuing the notice of violation but prior to entering into negotiations. This would not apply to unilateral compliance orders, nor preclude preliminary emergency actions or agreements.

25) DOE should involve workers in prioritization of environmental restoration activities and in choices of waste management strategies.

26) In hiring new personnel for positions that will deal with Rocky Flats, DOE, EG&G, EPA and CDH should require technical expertise sufficient to ensure ability to evaluate surveys of the extent of environmental contamination and proposed cleanup technologies and strategies.

Health

Underlying most Denver metropolitan area residents' concern with the nearby location of the Rocky Flats Plant is fear that emissions resulting from plant operations or incidents could be having harmful health impacts. In an effort to get a sense of whether actual and potential emissions from the Rocky Flats Plant pose a health threat to Denver area residents, the Council established a Health Committee. After considerable work, including meetings with several leading experts, the Committee concludes that we do not know with any degree of confidence about the effects of exposure to low levels of plutonium or other radionuclides. We also do not know how much exposure to radionuclides and other hazardous substances Denver area residents have received or are receiving because of Rocky Flats. The health studies called for in the Agreement in Principle

are an excellent beginning to addressing these critical unanswered questions and the Health Committee and the Council applaud them. The intention of the following recommendations is that DOE and others take necessary measures to ensure effective implementation of the Agreement in Principle health study provisions and take other key steps toward understanding health impacts of Rocky Flats.

27) DOE should fully fund, in accordance with recommendations from CDH and Panels I and II, the five year program of health studies called for in the Agreement in Principle to allow utilization of state of the art methodologies and completion of all the studies outlined.

28) DOE should reactivate, expand to include health impacts other than mortality and fully fund the Los Alamos National Laboratory study of mortality of plutonium workers at Rocky Flats (Wilkinson et al.).

29) DOE should release national DOE worker medical and exposure data fully, expeditiously and in a usable format. Unless DOE grant or contract funds are sought for the research, the data should be available to anyone. Personal identification data should be removed from the records but an expeditious system should be established for gaining permission from workers to allow them to be contacted.

30) The U.S. Congress should establish medical surveillance programs to trace all DOE defense plant workers through their life for the purposes of: (a) supplementing the worker data base referred to in the preceding recommendation and (b) assisting diagnosis of health problems of the workers.

31) DOE should fully fund Colorado cancer and birth defect registries in accordance with provisions of the Agreement in Principle. The Colorado General Assembly should fully fund any costs not covered under those provisions and after the expiration of the Agreement.

32) DOE and CDH should monitor fully the nonradioactive hazardous emissions from Rocky Flats in conjunction with the increased monitoring called for in the Agreement in Principle. CDH should require study of health impacts of nonradioactive hazardous emissions from Rocky Flats as part of the health studies to be conducted in accordance with the Agreement in Principle.

Operations

Many of the health, safety and environmental impacts of Rocky Flats cannot be fully understood without understanding the actual operations of the pertinent parts of the Plant. In order to do this, the Council's Operations Committee received briefings from building managers and other Plant personnel. Among issues which the Operations Committee believes to be central to potential worker and public impact are emergency planning, air emission filtration systems, residue and waste treatment and safety systems and training. Most of the recommendations which follow address specific aspects of these issues. The Committee is also highly concerned about tradeoffs between safety and production goals and particularly concerned about potential safety problems in conjunction with Buildings 771 and 776. While DOE determined that it was necessary to replace these buildings as much as thirteen years ago, problems with the replacement building (371) have kept them operating. While recommendation number 40 addresses Buildings 771 and 776, the Committee was limited in the information it could obtain about the situation and the Council believes that this is an area that demands greater attention.

33) DOE should conduct a systematic review of all alarms and other safety systems throughout the Plant to make sure that they are turned on, functioning properly and understood by the workers. All new workers should be trained in alarm and safety systems and all workers periodically retrained.

34) DOE, CDH and DODES should expeditiously complete preparation of a new emergency response plan and maximum credible accident (MCA) review. Both planning efforts should incorporate meaningful public and local government review and comment. The scope of both should be broadened to include events and impacts other than radiological and to address representative, less than maximum but more probable accidents such as industrial fires.

35) DOE should conduct a review of all incinerators and other operations at Rocky Flats where possibility of fire, explosion or criticality exists for possible improvement of air emission filter configuration generally and specifically to ensure that filtration would remain intact in event of an accident. This review also should identify any operations where there should be supplemental filtration for gases or other emissions.

36) Since Rocky Flats relies almost exclusively upon High Efficiency Particulate Air (HEPA) filters for protection of the public from air emissions, DOE should convene a national expert technical review panel to identify problems with HEPA filter technology and maintenance and to recommend improvements. DOE should expeditiously implement recommended improvements.

37) DOE should fully implement the recommendations of the Criticality Panel report in regard to locating and removing plutonium from exhaust system ductwork. The Council is particularly concerned that DOE fully implement recommendations to prevent pre-filters being bypassed unnecessarily by safety systems or by workers.

38) In order to enhance waste volume reduction, DOE should fully fund and expedite deployment of the supercompactor, shredder and advanced size reduction facility in Building 776, provided that they can demonstrate that supercompacted waste would meet WIPP waste acceptance criteria. In order to avoid unnecessary worker exposure, the contact-handled Size Reduction Facility (SRF) should not be used for any work which could be accommodated in the remote-handled Advanced Size Reduction Facility (ASRF). If the SRF must be used, as much contamination as possible should be removed before the equipment is dismantled.

39) DOE should fully involve health physicists and other safety personnel in the planning of any major maintenance or renovation activity. DOE should curtail production in the impacted area if there would be potential for radiological risk or other worker exposure to hazards above routine operating levels.

40) On the basis, among other things, of DOE reports stating that Building 771 must be replaced, the Council is extremely concerned that continued operation of that building may threaten personnel health and safety and the environment. Since current plans forecast that another nine years may elapse before Buildings 771 and 776 are replaced, it is imperative that operation of these buildings be clearly made safe for workers until they are replaced. DOE should therefore reduce use of Building 771 and the production half of Building 776 to minimum possible levels and immediately implement all corrective actions thus far identified in safety analysis documents. DOE should expeditiously complete the safety analysis report - safety evaluation report process already underway for Building 771 and immediately implement its corrective action recommendations.

41) DOE should provide maximum opportunity for public input throughout the NEPA process for the proposed upgrading of Building 371, including scoping, alternatives to be examined, the environmental impact statement itself and the record of decision. In scoping the Building 371 upgrade EIS, DOE should include consideration of decontamination and decommission as well as production functions.

42) DOE should make available plans for maintaining protection of health, safety and the environment in the event of full or partial curtailment of production at the various operations of Rocky Flats.

Monitoring

Central to understanding the environmental and health impacts of the Rocky Flats Plant is an effective and credible system for monitoring what actually is discharged or emitted by the Plant. Such a system would help to allay citizen fears and help to identify high priority modifications of plant operations in order to reduce potentially harmful emissions and discharges. The Agreement in Principle calls for several important measures to improve monitoring. Also the technical expertise being brought to bear by the Governor's Scientific Panel on Monitoring should identify many other valuable measures that should be taken. The following recommendations are ones based upon common sense, general practice or needed information.

43) DOE and the regulatory agencies should computerize their monitoring data to facilitate sorting and statistical evaluation. DOE should provide computer hookup to monitors at CDH, EPA and DODES for computer generated meteorological data and analyses and for data from environmental and safety monitors.

44) DOE, EPA and CDH should report peak as well as average emission and discharge levels to the public.

45) CDH, in conjunction with the Governor's Rocky Flats Scientific Panel on Monitoring Systems, should review the following issues regarding the adequacy of current ambient air monitoring systems and implement any appropriate identified improvements:

- the adequacy of existing Plant and CDH high volume air sampling equipment
- the location of existing CDH air monitoring stations
- the adequacy of existing air monitoring equipment for detection and quantification of minute radioactive aerosols
- the need for and possibility of monitoring volatile organic and other nonradioactive contaminants.

46) CDH should install alternative types of monitors on a trial basis at existing or additional ambient monitoring sites. The performance and findings of these monitors should be evaluated after three or four months to determine whether they should be employed instead of or in addition to existing monitors. Alternative types of monitors to be installed should include, but need not be limited to:

- PM-10 or other alternate technology monitors
- monitors elevated 20 feet or other heights above ground level
- monitors that rotate with the wind

47) CDH and/or EPA should employ a mobile monitoring system to systematically check for "hot spots" and respond to public concerns.

48) DOE should install emission monitors for appropriate gases and particulates as well as radioactivity at the various stacks and vents at the Plant. To the extent feasible, continuous monitors should be employed and connected directly to EPA and CDH. All stack and vent monitors should be accessible by CDH and EPA as well as plant personnel.

49) CDH should promulgate general regulations for water discharge, air emission or land disposal of any substance reasonably suspected of being hazardous for which regulations and standards do not presently exist. CDH should promulgate air quality standards and regulations for those radionuclides, volatile organic compounds and other hazardous substances emitted to the air from Rocky Flats. CDH should require and DOE should provide stack and vent monitoring at Rocky Flats in the same manner as for new sources.

50) DOE should provide an analysis of the feasibility, cost and impacts of eliminating offsite discharges from the Plant sanitary sewage treatment plant.

51) DOE should provide a status report on its response to groundwater monitoring deficiencies identified by CDH and the EPA Hazardous Waste Groundwater Task Force.

52) CDH should review current waste drum monitoring practices to determine if changes or outside participation are necessary to ensure accurate determination and labelling of waste drum contents.